

**AMENDED MEMORANDUM OF UNDERSTANDING BETWEEN
THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT
AND THE COUNTY OF CONTRA COSTA
FOR MEETING THE REQUIREMENTS OF THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989**

This Amended Memorandum of Understanding ("Amended MOU") is entered into by and between the Kensington Police Protection and Community Services District, a public agency formed pursuant to California Government Code section 61000, et seq. (hereinafter "District") and the County of Contra Costa, a political subdivision of the State of California, (hereinafter "County"). District and County may be referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS

A. The County Board of Supervisors and the District Board of Directors represent, within their respective boundaries, the residents in the unincorporated area of Contra Costa County.

B. District is a community services district providing solid waste management, resource recovery and disposal services to residents and businesses within the unincorporated area of Contra Costa County known as Kensington.

C. The California Legislature has enacted the California Integrated Solid Waste Management Act of 1989, Chapter 1095, Statutes of 1989 (hereinafter "the ACT"). Amendments to the ACT have been adopted and others may be adopted in the future. The ACT is codified in California Public Resources Code section 40000 et seq.

D. The ACT requires that the County prepare and adopt a Source Reduction and Recycling Element (hereinafter "SRRE") and a Household Hazardous Waste Element (hereinafter "HHWE") for the unincorporated areas of Contra Costa County. The County has adopted these elements, which were approved by the State and are included in the Countywide Integrated Waste Management Plan for Contra Costa County. The ACT requires the County to implement diversion programs identified in the SRRE and HHWE. The County may modify and eliminate these programs and add new diversion programs from time to time as circumstances warrant. The SRRE programs and HHWE programs then in effect during the term of this Amended MOU will be referred to, respectively and individually, as the "SRRE Programs" and "HHWE Programs" and collectively as the "SRRE and HHWE Programs."

E. The ACT, as amended, also requires County to implement a commercial solid waste recycling program and a commercial organic waste recycling program (collectively "Commercial Recycling Programs"), and to prepare and submit annual reports to the State on County's progress in implementing these programs.

F. The ACT further requires the diversion of 50 percent of all solid waste through source reduction, recycling and composting activities. County is designated within the ACT as the responsible agency for meeting this waste reduction mandate in the unincorporated areas of Contra Costa County.

G. County and District have statutory powers to contract and enter into agreements.

H. District is authorized and empowered by State of California Community Services District Law, California Government Code section 61000 et seq., to collect and dispose of waste and garbage. On or about September 1, 1997, District entered into a franchise agreement with Bay View Refuse and Recycling Services, Inc. ("Bay View"), to provide solid waste collection and disposal services within District's jurisdictional boundaries.

I. Concurrently with the approval of the above franchise agreement, County and District entered into a Memorandum of Understanding (the "1997 MOU") for the purpose of meeting the mandates of the ACT with regard to the unincorporated territory of Contra Costa County within District's jurisdictional boundaries, and further coordinate with each other to facilitate County's achievement of the countywide goals pursuant to the ACT.

J. District's 1997 franchise agreement with Bay View expired on August 30, 2015. District has entered into a new franchise agreement with Bay View, effective September 1, 2015.

K. The 1997 MOU is scheduled to expire on September 1, 2016. County and District wish to enter into this Amended MOU to replace the 1997 MOU.

NOW, THEREFORE, for good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, County and District agree as follows:

ARTICLE 1: PURPOSE OF THE AMENDED MOU

1.1 GENERAL. The purpose and Intent of this Amended MOU is to provide a representative, economical and effective means by which the unincorporated areas of Contra Costa County may achieve the waste reduction goals set forth in the ACT and County may satisfy reporting obligations to the State.

ARTICLE 2: FRANCHISE, ACT AND OTHER SOLID WASTE REQUIREMENTS

2.1 FRANCHISE. The current franchise agreement between District and Bay View, the term of which commenced on September 1, 2015, and will expire on August 31, 2023 ("Franchise Agreement"), is attached as Exhibit A to this Amended MOU. County acknowledges that the Franchise Agreement provides for the implementation of recycling and organic waste collection and diversion services that are consistent with

the SRRE. County further acknowledges that the Franchise Agreement authorizes District to modify the scope of services to be provided by Bay View, including mandating additional collection services necessary to meet the goals and mandates of the ACT and other laws regarding solid waste management or recycling, as may be adopted from time to time.

2.2 COUNTY PROGRAMS.

2.2.1 County intends to continue to implement the SRRE and HHWE Programs and the Commercial Recycling Programs, as required by State law, in the unincorporated area, including the Kensington area. District and County shall cooperate in the implementation of such programs as appropriate.

2.2.2 When the County submits its annual report to the State as required under Public Resources Code section 41821, the County shall provide District with a copy of the report to serve as notification of any new, modified or discontinued SRRE or HHWE Programs.

2.3 COORDINATING COMMITTEE. District shall provide staff support to a coordinating committee which consists of five members: one member of the District Board of Directors or the member's alternate, one District staff person, one representative of Bay View, one member of the County Board of Supervisors or the member's alternate, and one County staff person. The purposes of the coordinating committee are to facilitate communications among County, District and Bay View and to assist in developing diversion programs in a cost effective manner.

2.4 DATA COLLECTION.

2.4.1 Pursuant to the ACT, as amended, the County is responsible for reporting specified information to the state periodically regarding solid waste disposal and diversion within the unincorporated areas of Contra Costa County. District agrees to implement monitoring, reporting and data collection methodologies as established by County from time to time in response to State requirements. District shall provide information to County in the computerized or non-computerized form (including format) as requested by County, in a timely manner.

2.4.2 District shall require Bay View to provide complete recycling reports in the form attached as Exhibit B to County on a quarterly and annual basis. The first quarterly report shall be submitted by November 15, 2016, for the prior July/August/September quarter, followed by quarterly reports on the following schedule: February 15 for October/November/ December; May 15 for January/February/March; and August 15 for April/May/June. An annual report is due February 15, 2017, for calendar year 2016 and then each year thereafter on the same schedule. The scheduling and required content of these reports may be modified by County as needed from time to time.

2.4.3 District shall require Bay View to provide the following information for each calendar year to the County in writing no later than February 15 of each year for inclusion in County's annual report to the State:

- a) Evidence of outreach efforts by District and Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling, including a copy of any District web page that contains information pertaining to either of these recycling programs.
- b) Samples of written notices, outreach materials and noncompliance letters sent by District or Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling.
- c) The number of businesses that District deemed to be out of compliance with requirements of the commercial solid waste recycling or commercial organic waste recycling programs during the calendar year.
- d) Descriptions of any other related activities conducted or technical assistance provided by District or Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling.

2.4.4 District shall provide to County the following information in a timely manner or by the applicable deadlines specified below:

- a) notification of any rate application received from contractor (copy of rate application to be made available upon request);
- b) notification of District's notice to contractor of rate decrease;
- c) notification of contractor's written notice of CPI rate change;
- d) notification of any rate change approved by District, including CPI change or rate reduction;
- e) copy of draft customer satisfaction survey, for County review and approval;
- f) copy of final customer satisfaction survey and recycling survey (at the time the surveys are provided to Kensington residents) and results;
- g) copy of draft annual customer information, for County review and approval;
- h) final copy of annual customer information;

- i) copy of draft waste reduction, recycling and HHWE promotional information, for County review and approval;
- j) final copy of waste reduction, recycling and HHWE promotional information, at the time the information is provided to Kensington residents;
- k) notification of the number of Bay View's customers and types of services provided as of December 31 of each year;
- l) notification regarding any requested or planned changes in collection services provided under the Franchise Agreement (including but not limited to types of materials collected for recycling or composting and methods and frequency of collection);
- m) copy of notice from contractor of intent to change disposal site for solid waste and/or intent to change delivery site for recyclables (including green waste) or reusables;
- n) copy of request by contractor for authority not to collect materials for which there is no adequate market, for County review and approval;
- o) copy of any written notice of breach sent by District to the contractor; and
- p) copy of any proposed or approved amendment, modification, notice of termination, request to assign, assignment and consent to assignment of the Franchise Agreement.

County shall have 30 days to review drafts submitted under e), g), and i), and respond to District with any reasonable modifications. If District does not receive a response to within 30 days, it may assume that County has approved a draft as submitted. County shall have 30 days to review and respond to requests submitted under subparagraph n). If District does not receive a response to such a request within 30 days, it may assume that County has approved the request.

2.5 PUBLIC INFORMATION. District shall provide a means for County to disseminate information to individual customers relating to the SRRE and/or HHWE. If dissemination of information will be through customer billings, District shall inform County of applicable deadlines for including information with customer billings. In addition, District will arrange for distribution to individual customers of other materials provided by County related to environmental programs at no cost to County other than direct costs such as incremental postage.

2.6 DISTRICT PROGRAMS.

2.6.1 District will implement the SRRE and HHWE Programs in good faith and in a manner that is reasonably calculated to achieve the County's diversion mandate under the ACT.

2.6.2 District shall design and modify programs and/or rate structures as needed to meet the overall goals and requirements of the ACT, as amended. Specifically, District will implement each of the selected SRRE and HHWE Programs that require implementation by franchisor agencies and/or haulers. District will provide local publicity and generate local interest in solid waste and diversion programs, provide locations for activities such as compost workshops, determine any special needs that the community may have in regards to solid waste pickup services, including recycling and green waste and work with County staff to develop "reduce, reuse and recycle" programs that will be effective in the Kensington community. District shall notify County of the implementation of any "reduce, reuse, recycle" programs required for the implementation of the SRRE or HHWE or overall compliance with the ACT. The SRRE and HHWE Programs and other programs that must be implemented to comply with the ACT shall not be reduced or eliminated by Bay View or District unless agreed upon in advance in writing by County's Conservation and Development Director.

2.6.3 If County considers District's implementation of one or more such programs to be inadequate (as measured against the description of the program and its anticipated impact on waste diversion), County may bring the matter to the attention of the Coordinating Committee. If, thereafter, County continues to consider District's implementation to be inadequate, County may notify District in writing specifying the deficiency and proposing specific changes. If District does not implement the changes in a reasonable time, County may independently arrange for the implementation of such program changes and may require District to pay the costs thereof.

2.7 HOUSEHOLD HAZARDOUS WASTE PROGRAM. District shall be responsible for its pro rata share of costs incurred by County in implementing the HHWE. In order to accomplish this, District will include in Bay View's rates, as a pass through expense, the amount of County's actual or projected HHWE costs for each year. County will bill Bay View directly for the amount invoiced by the operator of the West County Household Hazardous Waste Facility based on the actual number of Kensington users. District shall require Bay View to mail the payment requested on behalf of the operator to the County directly within 30 days of receiving County's billing.

2.8 FRANCHISE FEES. District shall include in the rates charged by Bay View, a Franchise Fee in an amount determined by County, to pay for County expenses and costs incurred in implementing the SRRE and HHWE, the Commercial Recycling Programs and other costs incurred in connection with solid waste management and diversion, including, but not limited to, costs associated with this MOU. Unless otherwise directed by County, the Franchise Fee to be paid to County shall be 3% of Bay View's gross receipts. County shall not increase the Franchise Fee above 3% unless County's costs of administering solid waste and diversion programs, including

but not limited to costs of implementing the SRRE, HHWE, and the Commercial Recycling Programs, exceed the then applicable Franchise Fee. Any increase shall be proportional to District's share of the costs. If County's costs of administering solid waste and diversion programs, including costs of implementing the SRRE, HHWE and the Commercial Recycling Programs, decreases, District may request a decrease in the Franchise Fee. District shall have no duty to defend County in any suit challenging County's Franchise Fee. County shall have no duty to defend District in any suit challenging the rates charged by Bay View.

2.9 FREE SERVICE FOR COUNTY. District shall provide solid waste collection and disposal services at those County buildings within the District's jurisdictional boundaries (currently, the Library) designated by the Director of Conservation and Development from time to time, at no charge to County.

2.10 COUNTY AUTHORITY DISCRETION.

2.10.1 The ACT, other California statutes, and the California Constitution, authorize, and/or require County to undertake a number of activities involving solid waste handling and disposal. The ACT specifically empowers County to undertake certain planning functions including the development of SRRE's, HHWE's and the Countywide Integrated Waste Management Plan.

2.10.2 The Franchise Agreement provides for District control over the location at which solid waste is disposed. District agrees to direct Bay View to transport (or not transport) solid waste to specified landfills or solid waste handling facilities as directed by County in the following circumstances:

- a) County determines that the landfill currently being used is unpermitted, is in violation of its permits, or is otherwise out of compliance with federal or state environmental laws, regulations or standards such that the disposal of solid waste from Kensington creates a potential liability for County, and so advises District, and other agencies in the unincorporated area of Contra Costa County using such landfill, in writing;
- b) County requires the ability to commit the solid waste from several jurisdictions, including Kensington, to a particular landfill in order to secure volume reductions on tipping fees charged at such landfill, and the tipping fees for the aggregated waste stream are lower than those then paid by the District at the landfill it is using;
- c) County determines that the solid waste diversion goal required by the ACT will not be met in the unincorporated area of Contra Costa County, has made a diligent effort to implement the SRRE and HHWE Programs and Commercial Recycling Programs which are the responsibility of County, and has determined that it is necessary for an overall Countywide effort which includes the use by its franchisees and

franchisor agencies in the unincorporated areas of materials recovery facilities to secure the additional recycling needed to comply with the ACT.

2.10.3 If County determines that it is necessary for proper implementation of the SRRE Program or HHWE Program, County may direct District to direct specified recyclable materials, including green waste, collected within the District's boundaries to be delivered to a particular purchaser of such material. County will not exercise its discretion, as described in this paragraph, unless it has or will also direct similarly situated recyclable materials collected in other County franchised areas.

ARTICLE 3: TERM AND TERMINATION

3.1 TERM. The term of this Amended MOU will commence on September 1, 2016, and expire on August 31, 2024, unless terminated sooner in accordance with section 3.3.

3.2 INCORPORATION, ANNEXATION. If any of the territory covered by this Amended MOU is annexed to a municipal corporation or becomes incorporated, this Amended MOU shall be terminated as to said territory upon the effective date of the municipal corporation's determination to franchise or otherwise regulate solid waste and recycling in said territory. District shall promptly notify County of all completed annexations and incorporation.

3.3 TERMINATION OF FRANCHISE AGREEMENT. This Amended MOU shall automatically terminate one year after the termination of the Franchise Agreement unless District enters a new Franchise Agreement that provides for the effective implementation of the SRRE and HHWE no less effectively than as provided in Exhibit A.

ARTICLE 4: INSURANCE INDEMNITY, FINES AND ALLOCATION OF LIABILITY

4.1 INSURANCE AND INDEMNITY. Neither County nor District, as a condition of the execution of this Amended MOU, shall be required to provide direct insurance coverage or protection to the other. Except as provided in section 4.2 (ACT Requirements), neither County nor District is required to contractually indemnify the other against damages to any person or property not a party to this Amended MOU.

4.2 ACT REQUIREMENTS. To the greatest authorized by law, District shall indemnify County for any fines or penalties imposed on County by the State for failure to properly implement County's SRRE or HHWE, or the Commercial Recycling Programs, where the failure is partly or wholly attributable to action or inaction by District. District's share of any fines or penalties imposed on County for failure to properly implement County's SRRE or HHWE shall be proportionate to the District's share of responsibility for failure to implement the SRRE and HHWE, as determined by the County in accordance with Public Resources Code section 41821.2, subdivision (d). District's indemnity obligation under this section 4.2 shall survive the expiration or termination of this Amended MOU.

ARTICLE 5: GENERAL PROVISIONS

5.1 SEVERABILITY. The invalidation of any term, condition, or provision of this Amended MOU as a result of a legal action brought by a person or entity not a party to this Amended MOU shall not affect the validity or enforceability of the remaining provisions. However, if one or more material provisions is affected, the Parties agree to negotiate in good faith to reach agreement on revisions which preserve the substance hereof.

5.2 ENTIRE AGREEMENT; MODIFICATION. This Amended MOU constitutes the entire agreement between the Parties regarding the matters discussed herein and supersedes the 1997 MOU and any other agreements, representations and understandings of the Parties regarding the matters discussed herein. This Amended MOU may be amended or modified only in a writing executed by the Parties.

5.3 ASSIGNMENT AND DELEGATION. Except as provided herein, neither County nor District shall assign any rights nor delegate any obligations as provided under this Amended MOU without written notice to and consent of the other Party to this Amended MOU.

5.4 CALIFORNIA LAW. This Amended MOU, its interpretation and all work performed thereunder, shall be governed by the laws of the State of California.

5.5 NOTICES.

5.5.1 All notices and communications deemed by either Party to be necessary or desirable to be given to the other Party shall be in writing and may be given by personal delivery to a representative of the Parties or by mailing the same postage prepaid, addressed as follows:

If to District:	Kensington Police Protection and Community Services District 217 Arlington Avenue Kensington, California 94707-1401 Attention: General Manager
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If to County:	Contra Costa County Conservation and Development Department 30 Muir Road Martinez, California 94553 Attention: Solid Waste Program Manager
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Notices may also be transmitted electronically to the e-mail addresses designated by the representatives of the Parties identified above. A notice provided by e-mail will be deemed received by a Party upon delivery of a written acknowledgment of receipt by that Party to the Party sending the notice.

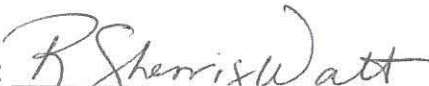
5.5.2 The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

5.6 WAIVER. The waiver by either Party of any breach or violation of any of the provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

5.7 ATTORNEY'S FEES. In the event of litigation between the Parties arising hereunder, each Party shall be responsible for and shall pay its own litigation expenses, including attorney's fees.


5.8 NO THIRD PARTY RIGHTS. This Amended MOU is not intended to and does not benefit any third party. No third party shall have the right to bring suit to enforce any of the provisions hereof.

**Kensington Police Protection and
Community Services District**

By: 
President, Board of Directors

Date: March 8, 2018


Attest:

By: 
Secretary

Approved as to Form:


By: 
Legal Counsel

County of Contra Costa

By: 
Vice Chair, Board of Supervisors

Date: June 12, 2018

Attest: David Twa, Clerk of the Board of
Supervisors and County Administrator

By: 
Deputy

Approved as to Form:

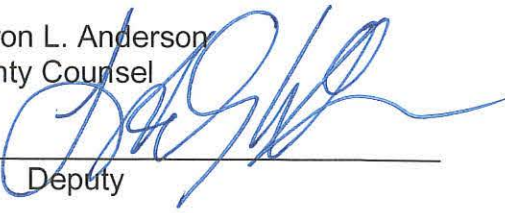
Sharon L. Anderson
County Counsel
By: 
Deputy

Exhibit A

FRANCHISE AGREEMENT
FOR SOLID WASTE, RECYCLABLE MATERIALS, AND
ORGANIC MATERIALS COLLECTION SERVICES
BETWEEN
THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICE DISTRICT
AND
BAY VIEW REFUSE AND RECYCLING SERVICES, INC.

October 23, 2014

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- A. Definitions
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- C. Approved Subcontractors
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1 **FRANCHISE AGREEMENT FOR SOLID WASTE,**
2 **RECYCLABLE MATERIALS, AND ORGANIC MATERIALS**
3 **COLLECTION SERVICES**

4 This Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collection
5 Services (the "Agreement") is entered into on the _____ day of _____ 2014, by and
6 between the Kensington Police Protection and Community Service District, a political subdivision of the
7 State of California (hereinafter, "District"), and Bay View Refuse and Recycling, Inc. a California
8 corporation, (hereinafter, the "Contractor") (together, the "Parties").

9 **RECITALS**

10 WHEREAS, the Legislature of the State of California, by enactment of the California Integrated
11 Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid
12 Waste management process which requires cities and other local jurisdictions to implement source
13 reduction, reuse and Recycling programs as integrated waste management practices; and

14 WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid
15 Waste handling within their jurisdictions; and

16 WHEREAS, Section 40059 of the State Public Resources Code provides that the District may
17 determine aspects of Solid Waste handling which are of local concern, including, but not limited to,
18 frequency of Collection, means of Collection and Transportation, level of services, charges and fees and
19 nature, location, and extent of providing Solid Waste handling services and whether the services are to
20 be provided by means of partially exclusive or wholly exclusive Agreements, contracts, licenses, permits
21 or otherwise; and

22 WHEREAS, the District is obligated to protect the public health and safety of the residents of the
23 District and arrangements by waste haulers for the Collection of Solid Waste should be made in a manner
24 consistent with the protection of public health and safety; and

25 WHEREAS, the District and the Contractor are mindful of the provisions of the laws governing the
26 safe Collection, Transport, Recycling, and Disposal of Solid Waste, including AB 939, AB 341, and the
27 Resource Conservation and Recovery Act 42 U.S.C. 9601 et seq.; and

28 WHEREAS, the District's Board of Directors determines and finds that the public interest, health,
29 safety and well being would be served if the Contractor performs these services for Residential and
30 Commercial Customers; and

31 WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the District's
32 Board of Directors is empowered to enter into agreements with any Person or corporation and to
33 prescribe the terms and conditions of such agreements; and

34 WHEREAS, the District's Board of Directors has selected Contractor based on its past provision of
35 Collection services to the District and has authorized the execution of this Agreement; and

36 WHEREAS, neither the District nor Contractor could anticipate all of the possible needs,
37 considerations, or eventualities that may arise during the Term of this Agreement and the Parties agree
38 that they will work together in a spirit of mutual cooperation to resolve any such issues as and when they
39 arise;

40 NOW THEREFORE, in consideration of the respective and mutual covenants and promises herein,
41 and subject to all the terms and conditions hereof, the Parties agree as follows:

42 **ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE**

43 **1.1 Grant and Limitations of Exclusive Franchise**

44 By the signing of this Agreement, the District grants to Contractor, and Contractor accepts, an exclusive
45 Franchise within the Franchise Area of the District. Subject to the limitations described in this Agreement
46 and Applicable Law, the Franchise granted to Contractor shall be the exclusive right to Collect, Transport,
47 handle, Process, Recycle, and, Dispose of all Solid Waste, Recyclable Materials, and Organic Materials
48 generated by Residential Premises and Commercial Premises in the District, as more particularly set out
49 in the scope of services described in Article 4 of this Agreement and subject to the limitations described
50 below in Section 1.1.A and except where otherwise precluded by federal, State, and local laws and
51 regulations.

52 A. **Limitations to Exclusivity.** The award of this Agreement shall not preclude the categories of Solid
53 Waste, Recyclable Materials, and Organic Materials listed below from being delivered, Collected,
54 and Transported by others provided that nothing in this Agreement is intended to, or shall be
55 construed to, excuse any Person from obtaining any authorization from the District which is
56 otherwise required by law:

- 57 1. Recyclable Materials. Other Persons shall maintain the right to accept donated Recyclable
58 Materials and to compensate the service recipient for Recyclable Materials so long as there is
59 no net payment made by the service recipient to such other Person;
- 60 2. Self-Hauled Materials. A Commercial business Owner or resident may Dispose of or arrange
61 for Processing of Solid Waste, Recyclable Materials, Organic Materials, and C&D generated in
62 or on their own Premises using their own vehicles and equipment, and, with respect to a
63 Commercial business, its own employees in conformance with all Applicable Laws and
64 regulations, including the County's mandatory subscription ordinance;
- 65 3. Donated Materials. Any items which are donated by the Generator to youth, civic, or
66 charitable organizations;
- 67 4. Beverage Containers. Containers delivered for Recycling under the California Beverage
68 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public
69 Resources Code;
- 70 5. Materials Removed by Customer's Contractor as Incidental Part of Services. Solid Waste,
71 Recyclable Materials, Green Waste, and/or C&D removed from a Premises by a contractor
72 (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-

73 out service), using its own employees, vehicles and equipment as an incidental part of the
74 service being performed and such contractor is providing a service which is not included in
75 the scope of this Agreement;

76 6. Animal, Grease Waste, and Used Cooking Oil. Animal waste and remains from slaughterhouse
77 or butcher shops, grease, or used cooking oil;

78 7. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge
79 ash, grit, and screenings;

80 8. Excluded Waste. Excluded Waste regardless of its source;

81 9. Materials Generated by Cemetery and School. Materials generated by Sunset Cemetery or
82 the Kensington Elementary School.

83 10. Materials Generated by State, County, and Federal Facilities. Materials generated by State,
84 County, and federal facilities located in the District.

85 Contractor acknowledges and agrees that the District may permit other Persons besides the Contractor
86 to Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
87 without seeking or obtaining approval of Contractor. Contractor shall be responsible for enforcing the
88 exclusive nature of this Franchise. District shall cooperate with Contractor in such efforts but shall not be
89 required to initiate or participate in litigation at its expense to do so. From and after September 1, 2015,
90 Contractor shall reimburse District for litigation expenses incurred by District in defending the exclusive
91 nature of the Franchise granted by this Agreement.

92 This Agreement and scope of this Franchise shall be interpreted to be consistent with Applicable Law, now
93 and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
94 regulations, or judicial interpretations limit the ability of the District to lawfully contract for the scope of
95 services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees
96 that the scope of the Agreement will be limited to those services and materials which may be lawfully
97 included herein and that the District shall not be responsible for any lost profits or losses claimed by
98 Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such
99 an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial
100 interpretations or new laws and the Contractor may meet and confer with the District and may petition
101 for a Rate adjustment pursuant to Section 9.3.

102 **ARTICLE 2: REPRESENTATIONS AND WARRANTIES** 103 **OF THE PARTIES**

104 2.1 Representations and Warranties

105 The Parties, by acceptance of this Agreement, represent and warrant that:

106 A. **Existence and Powers.** The Parties are duly organized and validly existing under the laws of the
107 State of California, with full legal right, power, and authority to enter into and perform their
108 obligations under this Agreement.

- 109 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and
110 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes
111 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance
112 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,
113 moratorium, and other laws affecting creditors' rights generally.
- 114 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under
115 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental
116 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any
117 term or condition of any judgment, decree, franchise, agreement (including, without limitation, the
118 certificate of incorporation of the Contractor), or instrument to which the Contractor or any Affiliate
119 is a party or by which the Contractor or any Affiliate or any of their properties or assets are bound,
120 or constitutes a default under any such judgment, decree, agreement, or instrument. The Parties
121 have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the
122 California Government Code relating to conflicts of interest for public officers and employees.
123 Contractor represents it is unaware of any financial or economic interest of any public officer or
124 employee of the District relating to this Agreement.
- 125 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in
126 equity, before or by any court or governmental authority, pending, or to the Parties' best
127 knowledge, threatened against either Party which is likely to result in an unfavorable decision,
128 ruling, or finding which would materially and adversely affect the validity or enforceability of this
129 Agreement or any such agreement or instrument entered into by either Party in connection with
130 the transactions contemplated hereby, or which would materially and adversely affect the
131 performance by that Party of its obligations hereunder or by the Contractor under any such other
132 agreement or instrument.
- 133 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the
134 Agreement Date which would prohibit the performance by either Party of this Agreement and the
135 transactions contemplated hereby.
- 136 F. **Contractor's Statements.** The Contractor's proposal and any other supplementary information
137 submitted to the District, which the District has relied on in awarding and entering this Agreement,
138 do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that
139 is necessary in order to make the statements made, in light of the circumstances in which they were
140 made, not misleading.
- 141 G. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it)
142 of the conditions and circumstances surrounding the Agreement and the work to be performed
143 hereunder. Contractor has taken such matters into consideration in entering this Agreement to
144 provide services in exchange for the compensation provided for under the terms of this Agreement.
- 145 H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
146 manage, Collect, Transport, Transfer, and Dispose of the Solid Waste and to manage, Collect,
147 Transport, Transfer (if applicable), Process Recyclable Materials and Organic Materials; and
148 Contractor possesses the equipment, facility, and employee resources required to perform this
149 Agreement.

150 I. **Voluntary Use of Approved Facilities.** The Contractor, without constraint and as a free-market
151 business decision in accepting this Agreement, agrees to use Approved Disposal Facilities for the
152 purposes of Disposing of all Solid Waste Collected in the District. In the same arrangement, the
153 Contractor agrees to use an Approved Recyclable Materials Processing Facility and an Approved
154 Organics Materials Processing Facility for Processing of all Recyclable Materials and Organics
155 Materials, respectively, Collected in the District and to use an Approved Transfer Facility (if needed)
156 for the purpose of Transferring Solid Waste, Recyclable Materials, and/or Organic Materials. Such
157 decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law
158 regarding flow control limitations or any definition thereof.

159 **ARTICLE 3: TERM OF AGREEMENT**

160 **3.1 Term of Agreement**

161 The Term of this Agreement is from the Commencement Date of September 1, 2015 through August 31,
162 2023 and shall continue in full force during that period, unless terminated earlier pursuant to this
163 Agreement.

164 **ARTICLE 4: COLLECTION SERVICES**

165 Contractor shall perform the services described in this Article 4. This Article 4 describes the requirements
166 for the services to be provided including the types and sizes of Containers to be serviced by Contractor,
167 available Service Levels and frequencies, acceptable and prohibited materials, and any additional services
168 to be provided by Contractor to Customers who subscribe to that program. Failure to specifically require
169 an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

170 **4.1 Residential Services**

171 Contractor shall provide the services described in this Section 4.1 to any Residential Customer within the
172 District who subscribes with Contractor for such service.

173 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Customer-provided containers one
174 (1) time per week from Residential Customers and Transport all Solid Waste to an Approved
175 Disposal Facility for Disposal.

176	Containers:	20-, 32-, 40-, 45- gallon (or similar sizes) Containers to be provided by
177		Customer.
178	Service Frequency:	One (1) time per week
179	Service Location:	Back-yard or Curbside service at Customer's option
180	Acceptable Materials:	Solid Waste
181	Additional Service:	On Customer's regularly scheduled Collection day, Contractor shall
182		Collect additional Solid Waste Containers (beyond the Customer's regular
183		Service Level) and shall charge Customer for the extra pick-up at the
184		District-approved Rate.

226 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided or Customer-
227 provided Containers not less than one (1) time per week from Commercial Customers and Transport
228 all Solid Waste to an Approved Disposal Facility for Disposal.

229 **Container Sizes:** 32- and 45-gallon Containers provided by Customers
230 1- and 2-cubic-yard Bins to be provided by Customer or Contractor upon
231 Customer's request. If Contractor provides Bin upon Customer request,
232 Contractor may charge Customer a District-approved Rate for Bin rental.
233 Drop Boxes provided by Contractor upon Customer request
234 **Service Frequency:** Up to five (5) times per week but not less than one (1) time per week, as
235 requested by Customer
236 **Service Location:** Curbside or other Customer-selected service location mutually agreed to
237 between Customer and Contractor.
238 **Acceptable Materials:** Solid Waste
239 **Additional Service:** Contractor shall provide a Bin exchange to any Commercial Customer for
240 cleaning and maintenance one (1) time each year, upon Customer
241 request.
242 **Other Requirements:** Contractor shall establish a minimum Service Level of thirty (35) gallons
243 per dwelling unit per week for Multi-Family Customers.

244 B. **Recyclable Materials Collection.** Contractor shall Collect Single Stream Recyclable Materials in
245 Customer-provided or Contractor-provided Containers not less than one (1) time every week from
246 Commercial Customers and Transport all Single Stream Recyclable Materials to an Approved
247 Recyclable Materials Processing Facility for Processing. Contractor shall provide service up to five
248 (5) times per week upon Customer's request, at no charge to Customers subscribing to Solid Waste
249 Collection service.

250 **Containers:** Containers, Carts, Drop Boxes
251 **Container Sizes:** 32- and 65-/68-gallon Carts (or similar size) provided by Contractor; or
252 Customer-provided Container
253 Drop Boxes provided by Contractor upon Customer request
254 **Service Frequency:** Up to five (5) times per week but not less than one (1) time every week,
255 as requested by Customer
256 **Service Location:** Curbside or other Customer-selected service location mutually agreed to
257 between Customer and Contractor
258 **Acceptable Materials:** Single Stream Recyclable Materials
259 **Additional Service:** None
260

261 C. **Green Waste Collection.** Contractor shall Collect Green Waste two times every month from
262 Commercial Customers that subscribe to service and shall Transport all Green Waste to an Approved
263 Organics Processing Facility for Processing. Contractor shall Collect Green Waste that is bundled,
264 tied, or placed in boxes or Containers. Contractor shall

265 **Containers:** Customer-provided boxes or Containers (or no Container if Customer
266 bundles or ties materials)
267 **Service Frequency:** Two (2) times every month
268 **Service Location:** Curbside or other Customer-selected service location mutually agreed
269 to between Customer and Contractor

270 **Acceptable Materials:** Green Waste
271 **Additional Service:** Restaurants may subscribe to wet or dry Collection service depending on
272 the type of materials generated and Contractor shall charge Customer for
273 such service at District-approved Rates
274 **Other Requirements:** None

275 D. **Extra Pick-Ups and Overage Collection.** Upon Customer request and to accommodate periodic
276 additional service needs, Contractor shall provide Collection service at a greater frequency than the
277 Customer's regular Service Level and Contractor may charge the District-approved Rate for the
278 higher Service Level.

279 On regularly scheduled Collection days, Contractor shall Collect excess Solid Waste ("overages")
280 Customer has placed for Collection beyond Customer's regular Service Level if Customer has
281 requested Collection of such overages and has agreed to pay an extra cost for such service. In such
282 case, Contractor shall Collect the overages and charge Customer at the District-approved Rate. If
283 Customer has not arranged for overage Collection and places excess Solid Waste out for Collection,
284 Contractor shall not Collect the Solid Waste and shall inform Customer of its reason for non-
285 Collection. For the purpose of this Agreement, two bags of overages shall be considered equivalent
286 to one 30-/32-gallon container.

287 E. **Locking Containers.** Contractor shall provide Commercial Bins that may be secured with a lock. At
288 Customer's option, Customer may secure its Container with a lock. In such case, Customer shall
289 provide Contractor a key to the lock and Contractor shall lock and unlock the Container at no
290 additional charge to the Customer at time of Collection. Contractor shall lock the Container
291 following the provision of Collection service.

292 F. **Option for Food Scraps Collection.** Pursuant to Section 4.1.D, District reserves the right to require
293 implementation of Food Scraps Collection services for Commercial Premises.

294 4.3 Collection Service Operating Requirements

295 A. **Regular Collection Hours.** The Contractor shall provide Collections from any Premises on any
296 weekday (except Saturdays and Sundays) between the hours of 6:00 a.m. and 6:00 p.m. provided,
297 however, that the District may, at its sole discretion, change the Collection time as required by the
298 needs of the Customers or the Contractor. Collections on Saturdays may be performed between
299 the hours of 6:00 a.m. and 6:00 p.m. if special service is requested or following a legal holiday
300 (pursuant to Section 4.3.D).

301 B. **Emergency Service.** Collection of Solid Waste necessitated by an emergency, which the District
302 General Manager determines threatens the public health and safety within the District, will be made
303 by the Contractor at the direction of the District General Manager. Such Emergency Services may
304 be required outside of the regular Collection hours and schedule. If the District requests the
305 Contractor to provide Emergency Services, the Contractor shall use the Contractor's good faith best
306 efforts to respond to such a request. The District shall reimburse the Contractor for all actual,
307 documented and reasonable additional costs incurred in order to comply with the provisions of this
308 Section.

- 309 C. **Noise Levels.** The Contractor shall perform Collection services in a manner that minimizes the noise
 310 resulting from its equipment and personnel and shall ensure that it is in compliance with Applicable
 311 Law.
- 312 D. **Holidays.** Collection of Solid Waste, Recyclable Materials, and Green Waste shall not be required on
 313 the following legal holidays: New Year's Day, Independence Day, Thanksgiving Day and Christmas
 314 Day, except in case of emergency or as otherwise required by the District General Manager.
 315 Whenever a regular Collection falls on such a holiday, the Collection shall be made on the following
 316 working day, and Collections throughout the District Franchise Area shall become current within
 317 one (1) week thereafter. Written notice of this policy (via bills, emails, or through other means
 318 approved by the District General Manager) shall be provided to Customers preferably no more than
 319 thirty (30) days prior to such alternative service day. Collection shall not be rescheduled when the
 320 holiday falls on a Saturday or Sunday, unless otherwise agreed to by the District and the Contractor.
- 321 E. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a manner
 322 as to protect the public health and safety. The Contractor agrees to establish procedures and
 323 educate its employees as to such procedures regarding proper methods for the protection of the
 324 general public, including, but not limited to, arranging for the proper and legal Disposal of hazardous
 325 substances encountered during its performance under this Agreement.
- 326 F. **Litter Prevention.** Contractor shall, at all times, take reasonable measures to keep the roads and
 327 streets in the District free from litter from the operations of its Operating Assets.
- 328 G. **Collection Day Changes.** If Contractor desires to modify Residential Customer(s)' regularly schedule
 329 day(s) of Collection, Contractor shall present a request for such change to the District General
 330 Manager for review and approval. Such request shall identify the reason for such change, the
 331 number of impacted Customers, and the addresses of impacted Customers. Following District
 332 General Manager approval, Contractor shall provide each Customer with notice of the change in its
 333 regularly scheduled Collection day, and such notice shall be provided one to two weeks prior to the
 334 effective date of the change.

335 **4.4 Other Services**

- 336 A. **General Pick-Up Collection Services.** Contractor shall provide one "general pick-up" Collection
 337 service to Residential Customers including Multi-Family Customers who are otherwise served as
 338 Commercial Customers, once per year in September. Customers may set out up to one and a half
 339 (1.5) cubic yards of excess Solid Waste and Recyclable Materials that is bundled, tied, or bagged.
 340 Contractor shall Collect such materials and Transport the materials to an Approved Disposal Facility
 341 or Approved Recyclable Materials Processing Facility.

342	Containers:	Not applicable
343	Service Level:	Up to one and a half (1.5) cubic yards of Solid Waste and/or Recyclable
344		Materials
345	Service Frequency:	Once (1) per year per Customer in September
346	Service Location:	Curbside
347	Acceptable Materials:	Solid Waste, Recyclable Materials provided that any single item is less
348		than two hundred (200) pounds in weight

349 **Additional Service:** Contractor shall Collect additional items that exceed the above described
350 service level, as requested by Customer, and may charge the District-
351 approved Rate for such service.
352 Contractor shall provide additional general pick-up Collection events for
353 a Customer beyond the one event in September, as requested by
354 Customer, and may charge the District-approved Rate for such service.
355 In such case, the Contractor shall provide the service to the Customer
356 within five (5) Business Days of the Customer's requested service date, as
357 mutually agreed upon by the Customer and Contractor.

358 B. **District and County Facilities** Contractor shall Collect Solid Waste, Recyclable Materials, and Green
359 Waste from District and County facilities in the Franchise Area in the same manner as those services
360 are provided to Commercial Customers. Contractor shall provide service to the District and County
361 facilities listed below as well as any future facilities owned and operated by the District without
362 charge to the District.

363 District Headquarters, 217 Arlington Ave: Two Solid Waste Containers per week
364 District Community Center at 59 Arlington Ave: One 1.5 yard Solid Waste Container per week
365 County's Kensington Library, 61 Arlington Ave
366 Public litter and recycling cans in the District
367

368 C. **District Special Events.** Contractor shall provide Solid Waste and Recyclable Materials Collection
369 services to District-sponsored public events held within the District to include, at a minimum,
370 Containers for the Collection of both Solid Waste and Recyclable Materials. Contractor shall provide
371 these services at no cost to the District or Customers.

372 D. **Community Clean-Up Events.** Contractor shall deliver and make Collection of up to three (3) 20-
373 cubic-yard Drop Boxes per year to the District for Collection of Solid Waste, Recyclable Materials or
374 Green Waste from one or more community events. The District shall select the events and inform
375 the Contractor of the dates and times the Drop Box(es) shall be delivered and Collected.

376 E. **Christmas Trees.** The Contractor shall Collect all Christmas trees placed Curbside by Residential
377 Premises on any day of the year provided that the tree is unflocked, without a stand, and is prepared
378 in the same manner as that described for Green Waste in Section 4.1.C. This service is free of any
379 additional charge to any Customer.

380 F. **Special Services.** The Contractor shall have the right, but not the obligation, to provide additional
381 Special Services requested by any Customer which are directly related or ancillary to any of the
382 other Collection services authorized hereunder. The nature and terms of any such Special Services
383 shall be negotiated with the Customer and compensation therefore shall be paid by the requesting
384 Customer. In the event that Customer and Contractor cannot agree on a Rate, the Contractor shall
385 provide the District with information supporting the Rate proposed by the Contractor. Upon receipt
386 and review of such information, the District may set the Rate, which shall become binding on the
387 Contractor.

388 G. **Collection of Illegally Dumped Materials.** Within the Franchise Area, Contractor shall, without
389 charge to the District or Customers, Collect materials that have been illegally dumped in public
390 roadways or alleys, at locations and in sizes requested by District General Manager; provided that

391 Contractor shall not be obligated to Collect more than three (3) cubic yards per event of non-
392 Hazardous Waste. Contractor shall perform such Collections when observed by Contractor's
393 personnel or within one (1) Business Day of request by District.

394 Contractor shall deliver such illegally dumped waste to an Approved Disposal Facility at no
395 additional charge to the District.

396 4.5 Standard of Performance

397 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to
398 the public and the Contractor's employees. Except to the extent that a higher performance standard is
399 specified in this Agreement, Contractor shall perform services in accordance with Solid Waste, Recyclable
400 Materials, and Organic Materials management practices common to California.

401 A. **Clean Up and Avoiding Damage to Property.** The Contractor shall use due care to prevent littering,
402 spills, or leaks of material placed for Collection. If any materials are littered, spilled, or leaked during
403 Collection or Transportation, the Contractor shall clean up all material before leaving the site. The
404 Contractor shall close all gates after making Collections and shall not do damage to or trespass upon
405 private or public property.

406 B. **Hazardous Waste.** The Contractor acknowledges its obligation to arrange for the Disposal of
407 Hazardous Waste that inadvertently comes into its possession or control. The Contractor agrees to
408 establish all reasonable practices for the screening and elimination of Hazardous Waste from the
409 waste stream including, but not limited to, the training of personnel and the revision of such
410 practices as necessary to reflect prudent waste screening considered to be good practice in the Solid
411 Waste Collection and Disposal industry at the time.

412 If the Contractor finds what reasonably appears to be discarded Hazardous Waste or Household
413 Hazardous Waste at a Designated Collection Location, the Contractor, in addition to the procedure
414 outlined in the previous paragraph, shall either:

415 1. Notify the Owner or Generator, if such can be determined, that the Contractor may not
416 lawfully Collect such material and leave a tag specifying the nearest location available for
417 appropriate Disposal or Processing of such material; or,

418 2. Follow such other procedure as the District General Manager shall approve.

419 In the event of a threat to the public health and safety, the Contractor shall immediately contact
420 the local fire department. The Contractor shall notify the District General Manager of such incident
421 within one (1) day.

422 C. Employees

423 1. **Conduct and Uniform.** The Contractor shall take all steps necessary to ensure that its
424 employees performing Collection services conduct themselves in a safe, proper, and
425 workmanlike manner, and that they work as quietly as possible. All such employees shall at
426 all times of employment be dressed in uniforms with suitable identification.

- 427 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
428 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
429 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its
430 drivers for safety.
- 431 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its
432 employees who operate Collection Vehicles or equipment. Contractor shall train its
433 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the
434 District General Manager's request, Contractor shall provide a copy of its safety policy and
435 safety training program, the name of its safety officer, and the frequency of its trainings.
- 436 D. **Improper Loading of Containers.** The Contractor may decline to Collect any Solid Waste, Recyclable
437 Materials, and/or Organic Materials that have been left for Collection in any manner which would
438 prohibit its safe Collection.
- 439 E. **Record of Non-Collection.** When any Solid Waste, Recyclable Materials, and/or Organic Materials
440 placed for Collection are not Collected by the Contractor, the Contractor shall leave a tag listing the
441 reasons for such non-Collection and a telephone number where the Customer may contact the
442 Contractor. This information shall either be in writing or by means of a checked box on a form. The
443 Contractor shall maintain, at its place of business, a log book listing all such circumstances in which
444 Collection is denied. The log book shall contain the names and/or addresses of the Collection
445 Premises involved, the date of such tagging, the reason for non-Collection, and the date and manner
446 of disposition of each case. The log book shall be kept so that it may be conveniently inspected by
447 the District General Manager upon request. The log relating to any particular tagging shall be
448 retained for a period of one (1) year following such tagging. As an alternative to non-Collection,
449 where the basis for the non-Collection notice is not resolved by the Customer and where
450 photographic evidence is provided by the Contractor, Contractor may complete the Collection and
451 charge the Customer at the District-approved Rate for an "extra can or bag of Solid Waste,"
452 equivalent to the Customer's Container size to compensate it for the costs of extra pickups and/or
453 sorting of materials.
- 454 F. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or
455 Subcontractor employed by it, to accept, request, solicit, or demand, either directly or indirectly,
456 any compensation for the Collection of Solid Waste, Recyclable Materials, and/or Organic Materials
457 or other Franchise Services, except such compensation as is specifically provided for herein as
458 approved by the District.
- 459 G. **Compliance with Applicable Law.** The Contractor shall comply with all Applicable Law relating to
460 any aspect of the Collection Services or this Agreement, shall obtain and maintain all legal
461 entitlements required for the Operating Assets and the Collection Services, shall comply with all
462 valid acts, rules, regulations, orders, and directions of any Governmental Body applicable to the
463 Operating Assets and the Franchise Services provided hereunder, and shall pay all taxes in
464 connection therewith.
- 465 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in
466 respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any
467 revenues of the Contractor there from, and shall provide and pay the cost of all utilities necessary

468 for the operation of the Operating Assets and the provision of the Franchise Services, when the
469 same shall become due.

470 4.6 Collection Locations

471 A. **General.** The Contractor shall be responsible for the Collection of all Solid Waste, Recyclable
472 Materials, and/or Organic Materials placed for Collection in a legal manner. The Contractor shall
473 immediately notify the District General Manager of any condition at or near any Designated
474 Collection Location which creates a safety hazard or accessibility problem. Upon authorization by
475 the District General Manager, the Contractor shall discontinue Collection for any such location until
476 the safety hazard or accessibility problem is corrected. Contractor may charge for the "Extra Pick-
477 up" at District-approved Rate(s) for such service in the event that its Collection vehicle is required
478 to return to the service location to complete Collection due to a safety hazard or access restriction
479 caused by the Customer and documented with photographic evidence.

480 B. **Enclosures.** Where the Collection Location is within an enclosure constructed pursuant to the
481 requirements of any public agency having jurisdiction over the design, construction, and location of
482 such enclosures, the Contractor shall be responsible for the removal and replacement of all
483 Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers
484 so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or
485 improvements. The Contractor shall promptly repair at its own expense any such enclosure or
486 adjacent facilities or improvements damaged by the Contractor. The District General Manager shall
487 resolve any disputes relating to such damage, and the Contractor agrees to abide by such decision.

488 4.7 Other Wastes

489 The Parties acknowledge that this Agreement is granted only with respect to the Franchise Services
490 described herein and does not include the Collection, Transportation, Processing, or Disposal of Hazardous
491 Waste, Medical Waste, and Liquid Waste. If the Contractor elects to provide any such services with respect
492 to Hazardous Waste, Infectious Waste, or any other waste regulated by the Department of Toxic
493 Substances Control, such services shall be performed by a separate legal entity separately insured and
494 liable, and according to Applicable Law. The Parties further acknowledge that the provision by the
495 Contractor of any services not specifically included within the Agreement are excluded from the
496 protection of this Agreement and may be the subject of competition among any and all legally authorized
497 haulers.

498 4.8 Changes in Scope of Franchise Services

499 The District may modify the scope of services performed by the Contractor pursuant to this Agreement.

500 The District shall provide written notice of any requested modification to the scope of services provided
501 by Contractor pursuant to this Agreement, and the Contractor shall provide the District with any
502 information requested by the District in connection with the proposed changes. The Contractor shall,
503 within sixty (60) days after receipt of such notice by the District, respond to the District's order. The
504 Contractor may seek additional compensation in the event the scope of services is modified in accordance
505 with this Section 4.8. The need for and amount of additional compensation shall be calculated following
506 a change in scope Rate review pursuant to Section 9.3.

507 4.9 Billing

508 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in
509 accordance with Article 9. Billing shall be performed on the basis of services rendered and this Agreement
510 shall create no obligation on the part of any Person on the sole basis of the ownership of property.
511 Contractor shall bill Customers three (3) times per year scheduled (in September, January, and May) in
512 such a manner that Customers' receive a bill every four (4) months. The format and content of the bills
513 shall be subject to District General Manager review and approval.

514 A. **Payment Methods and Location.** Contractor shall prepare and mail bills to, and collect payment
515 from Customers who decline to use such internet-based billing system. Contractor shall allow for
516 Customers to pay by check or money order.

517 B. **Billing Records.** Contractor shall maintain copies of all billings and receipts, each in chronological
518 order, for the Term of this Agreement, for inspection and verification by the District General
519 Manager at any reasonable time but in no case more than thirty (30) calendar days after receiving
520 a request to do so.

521 C. **Responsible Parties.** For the purposes of determining the parties ultimately responsible for the
522 purposes of billing, the Customer shall be determined to be the Owner of the property. The only
523 exceptions shall be for Single-Unit Dwellings or single businesses on a tax parcel where the tenant
524 or occupant of that property, rather than the Owner, subscribes to service.

525 D. **Bad Debt & Collections Procedures.** Contractor shall be responsible for collection of payment from
526 Customers with past due accounts ("bad debt"). Contractor shall make reasonable efforts to obtain
527 payment from delinquent accounts through issuance of late payment notices, telephone requests
528 for payments, and assistance from collection agencies.

529 Bills shall become due and payable three and one-half (3.5 months) after mailing (e.g., bills mailed
530 on September 1 shall be due and payable on December 15). In the event that any account becomes
531 more than forty-five (45) calendar days past due, Contractor shall notify such Customer of the
532 delinquency via written correspondence and telephone contact.

533 4.10 Public Awareness

534 The Contractor agrees, at its own expense, to prepare and send or deliver to Customers an annual service
535 information brochure providing a description of Collection service offering, including, but not limited to,
536 Rates, Collection service options, set-out requirements, payment options, discounts (if any), days of
537 Collection, service level and inquiry/complaint procedures, including the name, address and local
538 telephone number of Contractor and the name, address and telephone number of the District General
539 Manager. In addition, Contractor shall provide additional information to Customers at least twice annually
540 on such topics as proper Household Hazardous Waste Disposal, Solid Waste reduction and Recycling, or
541 such other relevant topics. All public education and outreach materials are subject to review and approval
542 of the District General Manager prior to release or distribution to Customer and/or the public.

543 To the extent reasonably possible, the Contractor shall accommodate the inclusion of any District-directed
544 information on its regular billing statements upon the request of the District General Manager without
545 cost to the District. If the District requests the distribution of information on a topic in a form that cannot

546 be printed or included with the Contractor's regular bill, the District and Contractor will share in the cost
547 of printing and distribution.

548 4.11 Transition to Next Contractor at End of Agreement

549 Contractor will take direction from the District and cooperate with the subsequent contractor to assist in
550 a timely and orderly transition of services from Contractor to subsequent contractor. In response to the
551 District's direction, Contractor shall provide then-current route lists in an electronic format, which identify
552 each Customer on the route, its service level (number of Containers, Container sizes, frequency of
553 Collection, scheduled Collection day), and any special Collection notes, and detailed then-current
554 Customer account and billing information. Contractor may, but shall not be obliged to, sell Collection
555 vehicles, equipment, or facilities to the next contractor.

556 4.12 Ownership of Materials

557 Once Solid Waste, Recyclable Materials, and Organic Materials are placed in Containers and at the
558 Collection location, ownership and the right to possession of such materials shall transfer directly from
559 the Generator to Contractor. Once Solid Waste, Recyclable Materials, and Organic Materials are
560 deposited by Contractor at an Approved Facility, such materials shall become the property of the owner
561 or operator of the facility.

562 4.13 Annexation and Change of Franchise Area Boundaries

563 Contractor realizes that the public agency boundaries may be altered by virtue of actions taken by the
564 Contra Costa County Local Agency Formation Commission (LAFCO). Contractor agrees that should a
565 municipal corporation lawfully annex territory which is within the Franchise Area, District may make such
566 alternations to the Franchise Area as the annexation necessitates. Should the Franchise Area boundaries
567 be amended, Contractor agrees that it will abide by any changes resulting from the Franchise Area change.
568 Contractor agrees that the District Board may make such alterations to the Franchise Area as are
569 necessitated by such Local Agency Formation Commission actions and that it shall have no right or claim
570 to damages or other relief against the District or County for such alterations to the Franchise Area.
571 However, nothing herein is intended to abrogate Contractor's rights under Public Resources Code Section
572 49520 or any successor or similar statute.

573 **ARTICLE 5: TRANSFER, PROCESSING, AND DISPOSAL**

574 5.1 Approved Facilities

575 A. **General.** The Contractor shall provide or arrange for Transfer (if appropriate) and Processing of
576 Recyclable Materials and Organic Materials Collected in the Franchise Area and for Transfer (if
577 appropriate) and Disposal of Solid Waste Collected in the Franchise Area, so long as such
578 arrangements are in full compliance with this Agreement and Applicable Law. Contractor may
579 engage a Subcontractor to provide Transfer, Processing, and/or Disposal services provided that the
580 Subcontractor is approved by the District pursuant to Section 7.6.D. Contractor shall only deliver
581 Collected materials to facilities approved by the District and such Collected materials shall only be
582 Transferred, Processed, and Disposed of at facilities approved by the District. Contractor shall pay

583 all costs associated with Transport, Transfer, Processing, and Disposal including per-Ton Tipping
584 Fees or gate fees charged for Transfer, Processing, and/or Disposal at Approved Facilities.
585 Contractor, or its Subcontractor, shall keep all existing permits and approvals necessary for use of
586 Approved Facilities in full regulatory compliance.

587 B. **Recyclables Processing.** The Contractor shall be responsible for Transfer (if appropriate) and
588 Processing of Recyclable Materials Collected in the Franchise Area. Contractor shall Transport
589 Collected Recyclable Materials to an Approved Recyclable Materials Processing Facility for
590 Processing.

591 C. **Organic Materials Processing.** The Contractor shall be responsible for Processing of Organic
592 Materials Collected in the Franchise Area. Contractor shall Transport Collected Organic Materials
593 to an Approved Organic Materials Processing Facility for Processing. Contractor shall arrange for
594 composting of the Organic Materials at an Approved Organic Materials Processing Facility. It shall
595 not use or allow for Organic Materials to be used at a landfill for alternative daily cover, alternative
596 intermediate cover, or other "beneficial reuse purposes" at a landfill.

597 D. **Solid Waste Disposal.** The Contractor shall Transport Solid Waste Collected in the Franchise Area
598 to an Approved Transfer Facility and shall arrange for Transfer and Disposal of all Solid Waste at an
599 Approved Disposal Facility. Contractor may directly Transport to and Dispose of Solid Waste at
600 Potrero Hills Landfill in Suisun, CA (an Approved Disposal Facility) in lieu of Transporting Solid Waste
601 to an Approved Transfer Facility. Residue Materials from the Recyclable Materials and Organic
602 Materials Processing shall be Disposed of by Contractor, or owner/operator of Approved Recyclable
603 Materials Processing Facility and Approved Organic Materials Processing Facility, at a Disposal
604 Facility selected by Contractor or the owner/operator of Approved Recyclable Materials Processing
605 Facility or Approved Organic Materials Processing Facility.

606 E. **Facility Records.** The Contractor shall keep and maintain such logs, records, manifest, bills of lading
607 or other documents as the District may deem to be necessary or appropriate to confirm compliance
608 with requirements of this Article and shall retain all weight slips or other call information provided
609 to the Contractor or Contractor's drivers by the owner or operator of Approved Facilities.

610 F. **Failure to Transport to Approved Facilities.** The Contractor's failure to properly Transport, or cause
611 to be Transported, Solid Waste, Recyclable Materials, and Organic Materials to Approved Facilities
612 as described herein is an Event of Default as described in Section 11.1.A of this Agreement, unless
613 the failure is the result of an Uncontrollable Circumstance or such material has been diverted by
614 means of alternative technology allowing AB 939 diversion credit to the District.

615 G. **Guaranteed Capacity.** Contractor shall be solely responsible for selecting Approved Facilities with
616 sufficient capacity at such Facilities to Transfer, Process, and/or Disposal of all Solid Waste,
617 Recyclable Materials, and Organic Materials Collected by Contractor under this Agreement
618 throughout the Term of the Agreement. Contractor shall provide the District, upon request, with
619 documentation demonstrating the availability of such sufficient capacity at Approved Facilities for
620 all materials Collected by Contractor in the District throughout the Term of this Agreement.

621 5.2 Marketing of Recovered Materials

622 Contractor shall be responsible for Processing or causing Processing of Recyclable Materials and Organic
623 Materials to recovery and market such materials. For all contracts with Subcontractors entered into or

624 renewed on or after the Agreement Date, Contractor agrees to require Subcontractors to guarantee that
625 Processing will result in significant diversion of Recyclable Materials Collected from Disposal so that
626 Residual Waste from the Recyclable Materials that is less than ten percent (10%) by weight of the
627 Recyclable Materials Collected measured on an average monthly basis. For all contracts with
628 Subcontractors entered into or renewed on or after the Agreement Date, Contractor agrees to require
629 Subcontractors to guarantee that Processing will result in significant diversion of Organic Materials
630 Collected from Disposal so that Residual Waste from the Organic Materials that is less than one percent
631 (1%) by weight of the Green Waste Collected measured on an average monthly basis. The residual level
632 shall be calculated as the monthly Tonnage of Processing Residual Waste divided by the total monthly
633 Tonnage of Recyclable Materials Collected or Organic Materials Collected as appropriate.

634 Contractor shall market or arrange for marketing of all Recovered Materials from the Recyclable Materials
635 and Organic Materials Collected in the District. Contractor's marketing strategy shall make reasonable
636 business efforts to promote the highest and best use of materials presented in the waste management
637 hierarchy established by AB 939. Where practical and cost-effective, the marketing strategy should
638 include use of local, regional, and domestic markets for Recyclable Materials and Organic Materials. With
639 the exception of the small quantities of Residual Waste, Contractor shall not Dispose of Recyclable
640 Materials or Organic Materials. Contractor shall make available to the District General Manager any and
641 all documentation of the final disposition of marketed Recyclable Materials and Organic Materials as well
642 as certification that such materials have not been Disposed or incinerated.

643 Contractor shall not Dispose of Recyclable Materials, Organic Materials, and C&D Collected in the District.
644 However, if market conditions are such that there are no purchasers and no users willing to accept such
645 Recovered Materials for reuse, Recycling, or Processing without payment by Contractor, Contractor may
646 submit a written request to the District General Manager for authority not to Collect such materials while
647 such market conditions persist. If the District General Manager can make the findings specified in Article
648 418-10.8 in the County Ordinance Code, and unless County otherwise directs, the District General
649 Manager shall exempt such material(s) from Recycling on conditions he/she specifies.

650 5.3 Weighing and Record Requirements

651 Contractor shall ensure that all Solid Waste, Recyclable Materials, and Organic Materials are weighed
652 upon delivery to Approved Facilities, and all weight and related delivery information (including date, time,
653 material type, route and truck number) ("Delivery Data") is recorded. Contractor shall provide District
654 with copies of the Delivery Data upon request. If Contractor, or its Subcontractor, record vehicle receiving
655 and unloading operations on video at Approved Facilities, Contractor shall make those videos available
656 for District review during the facility's operating hours, upon request of the District.

657 5.4 District Right to Modify Facility Arrangements

658 The District may order the Contractor to modify or terminate its Transfer, Processing and/or Disposal
659 arrangements if:

- 660 A. The District determines that such arrangements threaten public health or safety, or
- 661 B. The District determines that the District is not adequately protected from liability for the activities
662 of the Transfer, Processing, or Disposal facility operations and entities, or

663 C. The District determines that the diversion levels of the particular facility causes the District to be
664 out of compliance with AB 939, AB 341, or any other regulations regarding Solid Waste, Recyclable
665 Materials, and Organic Materials management, or the Contractor is Disposing of Recovered
666 Materials in a manner or volume which does not result in significant diversion credit to the District.

667 In the event the District directs the Contractor to modify or terminate Transfer, Processing, or Disposal
668 arrangements, the District acknowledges that the Contractor shall nonetheless be entitled to recover,
669 through the Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the
670 Contractor incurred in implementing such Transfer, Processing, or Disposal arrangements (determined in
671 accordance with generally accepted accounting principles).

672 5.5 Title to Recovered Materials

673 As between the Parties, the Contractor has title to and liability for all Recovered Materials, and shall
674 indemnify, defend, and hold harmless the District from any property damage, personal injury, or
675 consequential damages suffered by any Person from exposure to or as a result of Processing any
676 Recovered Materials or subsequent product made from Recovered Materials based on any theory of
677 liability. The Contractor shall promptly notify the District of any claim by any Person arising out of the
678 marketing, Disposal, or reuse of Recovered Materials.

679 ARTICLE 6: OPERATING ASSETS

680 6.1 Operating Assets

681 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,
682 Operating Assets which in number, nature, and capacity shall be sufficient to enable the Contractor
683 to provide the Franchise Services in accordance with the terms hereof and such assets shall be
684 subject to inspection by the District at any time.

685 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and Vehicle or
686 equipment number shall be visibly displayed in letters not less than three (3) inches in height on
687 both sides of its Vehicles or other Collection equipment used by the Contractor.

688 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered
689 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall be
690 of a type approved by the District, shall be kept clean and in good repair, and shall be continuously
691 maintained in a watertight condition. Vehicles used to Collect or Transport Solid Waste, Recyclable
692 Materials, and Organic Materials shall be kept covered at all times except when such material is
693 actually being loaded or unloaded, or when the Vehicles are moving along a Collection route in the
694 course of Collection. All Vehicles shall carry a broom, shovel, and operable fire extinguisher.
695 Collection Vehicles shall be washed at least once every seven (7) days and cleaned and painted as
696 required to maintain a clean appearance. All Vehicles must be made available for inspection upon
697 reasonable notice by the District General Manager.

698 D. **Spillage.** Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall,
699 or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload during
700 transit, the Contractor shall immediately arrange for the clean-up and Transportation of the payload

701 to the appropriate facility at the Contractor's sole cost and expense, shall pay any resulting fines,
702 assessments, penalties, or damages resulting therefrom, and shall indemnify and hold harmless the
703 District in accordance with the procedures provided in Section 10.1 hereof from all loss-and-
704 expense resulting therefrom. Failure to clean-up may result in Liquidated Damages (Section 11.2).

705 E. **Computer System Compatibility.** The Contractor shall maintain records and data in an electronic
706 format compatible with the versions of Microsoft Word and Excel currently in use by the District at
707 any given time during the Term of this Agreement. The Contractor will, at its cost and expense, if
708 requested by the District General Manager, provide any reports or data required by this Agreement
709 via email, on computer disc, or through other electronic format. Raw or printed data may not be
710 submitted as a substitute to the Contractor's obligation to provide various reports under this
711 Agreement.

712 6.2 Operation and Maintenance of the Operating Assets

713 The Contractor, at its cost and expense, shall at all times: 1) operate the Operating Assets properly and in
714 a safe, sound, and economical manner; 2) maintain, preserve, and keep the Operating Assets in good
715 repair, working order, and condition; 3) staff the Operating Assets with the appropriate number of
716 licensed employees consistent with good management practice; and, 4) make all necessary and proper
717 repairs, replacements, and renewals, so that at all times the operation of the Operating Assets may be
718 properly and advantageously conducted. The Contractor shall maintain the safety of the Operating Assets
719 at a level consistent with Applicable Law, the Insurance Requirements, and prudent Solid Waste and
720 Recycling management practices.

721 6.3 Containers

722 A. **District Regulations.** The District shall approve the number, type, size, and other specific physical
723 requirements for Containers.

724 B. **Containers for Residential Customers.** Residential Customers will supply and maintain all Solid
725 Waste, Recyclable Materials, and Green Waste Containers required for the services provided under
726 this Agreement.

727 C. **Containers for Commercial Customers.** The Contractor shall provide Commercial Customers with
728 Carts, Bins, or Drop Boxes for Solid Waste, Recyclable Materials, and Green Waste Collection as
729 needed for the Customer's Service Level. Such Containers shall be provided as an Operating Asset
730 at its own cost and expense. Each Contractor-provided Container shall be watertight, identified with
731 the Contractor's name and phone number, equipped with heavy-duty casters, and equipped with
732 closeable and lockable lids. Pursuant to Section 4.2.E, upon Customer's request, Contractor shall
733 provide lock and unlock service to each Bin at no additional cost.

734 D. **Collection Requirements.** After emptying any Container, the Contractor shall replace the Container
735 in an upright position at the place where such Container was placed by Customer for Collection. The
736 Contractor shall handle Containers in a manner so as to prevent damage or spillage, and shall not
737 throw, drop, or otherwise mishandle Containers during or after emptying them.

738 E. **Maintenance and Repair.** The Contractor shall be responsible for the general maintenance and
739 repair of Contractor-provided Containers, and shall provide an equivalent Container as replacement
740 during repairs and maintenance. If repairing, maintenance, steam cleaning, and/or repainting is

741 required as a result of abuse, neglect, or misuse on the part of any Customer, the Contractor may
742 charge the Customer a fee, to compensate for the cost thereof. The Contractor shall, within seven
743 (7) days, repair or replace any stolen, damaged or dilapidated Container, provided that the
744 Contractor shall only bear the cost of replacement of such Container the first time it is stolen and
745 thereafter such cost of replacement shall be borne by the Customer.

746 6.4 Vehicle Requirements

747 Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently
748 perform the work required by the Agreement in strict accordance with its terms. Contractor shall select
749 and provide the types and kind of Collection vehicles that a suitable for the District's narrow streets, paths,
750 roadways, hills, and other service conditions. Contractor shall have available sufficient back-up Vehicles
751 for each type of Collection Vehicle used to respond to scheduled and unscheduled maintenance, service
752 requests, complaints, and emergencies. All such Vehicles shall have watertight bodies designed to prevent
753 leakage, spillage, or overflow. All such Vehicles shall comply with all Federal, State, and local laws and
754 regulations including, without limitation, safety and emissions requirements, and such compliance shall
755 come at no additional cost to the District or Customers during the Term of this Agreement.

756 Collection Vehicles shall present a clean appearance while providing service under this Agreement.
757 Contractor shall inspect each Vehicle daily to ensure that all equipment is operating properly. Vehicles
758 that are not operating properly shall be taken out of service until they are repaired and operate properly.
759 Contractor shall repair, or arrange for the repair of, all of its Vehicles and equipment for which repairs are
760 needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and
761 operable condition. All vehicles shall be radio-equipped to facilitate communications between the route
762 driver and Contractor's management, dispatch, and customer service personnel.

763 **ARTICLE 7: GENERAL REQUIREMENTS**

764 7.1 Public Access to the Contractor

765 A. **Office Facilities.** The Contractor shall establish and maintain an office within the County through
766 which the Contractor's representatives may be contacted, unless otherwise approved by the District
767 General Manager.

768 B. **Office Hours and Telephone Access.** The Contractor's office hours shall be, at a minimum, from 8:00
769 a.m. to 3:00 p.m. daily except Saturdays, Sundays, and Holidays. These hours may be altered with
770 the approval of the District General Manager. Contractor shall answer calls from Customers and the
771 District during office hours and provide a twenty-four (24) hour phone messaging system for calls
772 received after hours. Contractor shall provide a local telephone or toll-free phone number for
773 Customer service calls and shall publish the telephone number(s) in the local telephone directory.

774 C. **Emergency Telephone Number.** The Contractor shall provide the District with an emergency
775 telephone number for use by the District General Manager outside normal business hours. The
776 Contractor shall have a representative, or an answering service to contact such representative,
777 available at the emergency telephone number during all hours other than normal office hours.

778 7.2 Service Complaints

779 A. **Complaints to Contractor.** The Contractor shall maintain during office hours a complaint service
780 and telephone answering system having an answering capacity satisfactory to the District General
781 Manager. All service complaints and billing complaints will be directed to the Contractor. The
782 Contractor shall record all complaints in a log, including date, complainant name and address, and
783 nature and resolution of complaint. This log shall be available for inspection by the District General
784 Manager during the Contractor's regular office hours. Copies thereof shall be furnished to the
785 District General Manager upon request.

786 B. **Required Response to Complaints.** Contractor shall develop and implement a policy and procedures
787 for responding to and recording Customer complaints, including dispute resolution. The policy and
788 procedure shall be subject to the approval of the District General Manager. The Contractor, within
789 twenty-four (24) hours of its receipt of notice from a Customer or the District General Manager of
790 a failure to provide any service(s) as required by the terms of this Agreement, shall provide such
791 service in a manner consistent with the requirements of this Agreement.

792 7.3 Accounting and Records

793 A. **Maintenance and Audit of Records.** The Contractor shall maintain in its principal office in the
794 County full and complete financial statements and accounting records for operations under this
795 Agreement in accordance with generally accepted accounting principles ("GAAP"). Contractor shall
796 account for revenues received and expenses incurred as a result of this Agreement separate from
797 the accounting for other operations performed by Contractor or its Affiliates. The Gross Receipts
798 derived from the Collection services under this Agreement, whether such services are performed
799 by the Contractor or by a Subcontractor, shall be recorded as revenues in the accounts of the
800 Contractor. Upon demand, the Contractor shall permit the District General Manager or his/her
801 designee to examine and audit the books of account of the Contractor at any and all reasonable
802 times for the purpose of verifying Contractor's performance under this Agreement. Upon request,
803 the Contractor shall allow the District General Manager or his/her designee to examine the reports
804 of Gross Receipts and the invoices pertaining to any fee, charge or District-approved Rate for
805 Franchise Services provided under this Agreement. Such request shall be made at reasonable times
806 and with reasonable notice.

807 In the event that a Special Circumstance Rate adjustment is requested pursuant to Section 9.3, such
808 records shall be subject to review at any reasonable time by an independent third party in
809 accordance with appropriate professional standards, and inspection, for the primary purpose of
810 reviewing changes in costs to the Contractor attributable to the Special Circumstance request. The
811 District General Manager shall, in its sole discretion, select the independent third party and define
812 the scope of work for such review. The independent reviewer shall provide any and all drafts of its
813 review to the District and the Contractor. The Party requesting the Special Circumstance Rate review
814 shall bear the cost of the review.

815 The Contractor shall maintain and preserve all cash, billing, and Collection, Transport, Transfer,
816 Processing, and Disposal records (including number of Customers [total, type, and Service Level],
817 route maps, service records, and other materials and operating statistics) throughout the Term of
818 this Agreement and for a period of not less than three (3) years following expiration or early
819 termination of the Agreement.

820 B. **Confidentiality.** The District agrees to hold financial statements delivered pursuant to this Section
821 and Exhibit D as confidential and shall not disclose the same unless and to the extent disclosure is
822 required pursuant to Applicable Law.

823 7.4 Reporting

824 Contractor's quarterly and annual reporting requirements are presented in Exhibit D. In addition,
825 Contractor shall maintain on file at its business premises documentation setting forth its Routing and
826 Collection System, a list of all Collection Premises in the District, organized alphabetically or by address,
827 and the identification of all services each receives. This information shall be updated and provided at no
828 additional cost to the District along with Contractor's annual report (as required in Exhibit D) to the District
829 and any time upon request of the District General Manager. The Contractor shall cooperate with the
830 District to periodically monitor the average volume of Solid Waste, Recyclable Materials, and Organic
831 Materials generated from each Collection Premises. Contractor shall provide route maps and operating
832 statistics upon request. Customer-specific records are subject to inspection, and copying by the District
833 during regular business hours with reasonable advance notice.

834 7.5 AB 939 and AB 341 Compliance

835 The Contractor shall provide on a monthly basis all necessary reporting data requested by the District and
836 County relating to the District's compliance requirements pertaining to AB 939 and AB 341 as it affects
837 the County's Integrated Waste Management Plan and the County's SRRE. Such report shall be provided
838 to the District within thirty (30) days after the end of each month. The Contractor shall cooperate in
839 activities requested by the District to measure diversion of Solid Waste from landfills including, but not
840 limited to, providing a location for conducting Solid Waste, Recyclable Materials, and/or Organic Materials
841 sorting at the Contractor's facility, and re-routing Vehicles on a temporary basis to facilitate composition
842 analysis. Such report shall include, but not necessarily be limited to, throughput, recovery rates per
843 material type, residue, costs, Recyclable Materials and Organic Materials commodity values, and final
844 disposition of Solid Waste, Recyclable Materials, and Organic Materials. The Contractor shall also supply
845 any other information reasonably requested by the District General Manager to meet State or federal
846 regulatory requirements as those requirements may be amended from time to time.

847 7.6 Personnel and Subcontractors

848 A. **Employment Practices.** The Contractor shall at all times maintain and follow employment practices
849 in accordance with all State and federal laws and regulations, and shall indemnify the District for
850 any Legal Proceeding relating to its noncompliance with such laws or regulations.

851 B. **Non-Discrimination.** In the performance of the terms of this Agreement, the Contractor agrees that
852 it will not engage in nor permit such Subcontractors as it may employ to engage in discrimination
853 against any employee or applicant for employment on the basis of race, sex, sexual orientation,
854 color, religion, ancestry, national origin, marital status, age or as a qualified individual with a
855 disability. This prohibition shall pertain to employment, upgrading, demotion, or transfer;
856 recruitment advertising; layoff or termination; rates of pay and other forms of compensation;
857 selection for training, including apprenticeship, and any other action or inaction pertaining to
858 employment matters.

859 C. **Personnel.** The Contractor shall employ personnel sufficient in number, training, experience, and
860 capability to ensure that the Franchise Services required to be performed under this Agreement are
861 properly carried out.

862 D. **Affiliates and Subcontractors.** Contractor shall not engage any Subcontractors, other than those
863 listed in Exhibit C and limited in their scope of service by Exhibit C, for performance of Franchise
864 Services without the prior written consent of District General Manager which consent shall not be
865 unreasonably withheld or denied.

866 7.7 District General Manager

867 The District has designated the District General Manager to be responsible for the monitoring and
868 administration of this Agreement. Contractor shall meet and confer with the District General Manager to
869 resolve differences of interpretation and implement and execute the requirements of this Agreement in
870 an efficient and effective manner that is consistent with the stated objectives of this Agreement.

871 From time to time, the District General Manager may designate other agents at the District to work with
872 Contractor on specific matters. In such cases, those individuals should be considered designates of the
873 District General Manager for those matters to which they have been engaged. Such designates shall be
874 afforded all of the rights and access granted thereto. In the event of a dispute between the District General
875 Manager's designate and Contractor, the District General Manager's determination shall be conclusive.

876 In the event of dispute between the District General Manager and the Contractor regarding the
877 interpretation of, or the performance of services under, this Agreement, the District General Manager's
878 determination shall be conclusive except where each such determination results in a material impact to
879 the Contractor's revenue and/or cost of operations. In the event of a dispute between the District General
880 Manager and the Contractor that results in such material impact to the Contractor, Contractor may appeal
881 the determination of the District General Manager to the District Board, whose determination shall be
882 conclusive. For the purposes of this definition, "material impact" is an amount equal to or greater than
883 two percent (2.0%) of Contractor's annual Gross Receipts under this Agreement.

884 District General Manager or their designate shall have the right to observe and review Contractor
885 operations and Processing Facilities and enter Premises for the purposes of such observation and review,
886 including review of Contractor's records, during reasonable hours with reasonable notice. In no event
887 shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after
888 receiving such a request.

889 **ARTICLE 8: DISTRICT AND COUNTY FEES**

890 8.1 District and County Fees

891 A. **District Franchise Fees.** In consideration of the rights provided Contractor herein, Contractor shall
892 pay Franchise fees to the District equal to seven percent (7%) of Gross Receipts. This fee shall be
893 paid on a monthly basis in the amount equal to seven percent (7%) of Gross Receipts for the most-
894 recently completed month.

895 B. **County Franchise Fee.** If a franchise fee is due to the County, the District shall be responsible for
896 paying the County franchise fee.

897 C. **County Household Hazardous Waste Fee.** The Contractor shall pay a Household Hazardous Waste
898 Fee to the County in an amount equal to the County's billing for the actual number of District
899 residents that use the County's Household Hazardous Waste Facility.

900 8.2 Payment Schedule and Late Fees

901 Contractor shall remit to District and County all fees as described in this Article on a monthly basis on or
902 before the last day of each month, during the Term of this Agreement and including final remittance due
903 to the District due after the end of the Term of this Agreement such as remittance of Franchise Fees on
904 Gross Receipts for services performed under this Agreement which were received after the end of the
905 Term. Such fees shall be payable to District and sent or delivered to the District General Manager with the
906 exception of County Household Hazardous Waste fees which shall be payable to the County and sent or
907 delivered to the County pursuant to Section 8.1.C.

908 If such remittance is not paid to the District or the County on or before the last day of each month, all fees
909 due shall be subject to a delinquency penalty of three percent (3%), which attaches on the first day of
910 delinquency. The delinquency penalty shall be increased an additional three percent (3%) and applied to
911 both the original amount due as well as any delinquency penalties previously applied for each additional
912 month the payment remains delinquent. For example, if the amount of the original fees owed equals ten
913 thousand dollars (\$10,000) the initial delinquency amount applied on the first day of delinquency will be
914 three hundred dollars (\$300) bringing the total amount to ten thousand three hundred dollars (\$10,300).
915 If that amount becomes past due for an additional month, the additional delinquency penalty shall be
916 applied to the ten thousand three hundred dollars (\$10,300) therefore, the new total amount due would
917 be ten thousand six hundred and nine dollars (\$10,609).

918 Each monthly remittance to the District shall be accompanied by a statement listing the amount of each
919 fee paid to the District and County; calculation of each fee; and, statement of Gross Receipts, by line of
920 business for the period Collected from all operations conducted or permitted by this Agreement. The
921 District General Manager may, at any time during the Term, request a detailed calculation of Gross
922 Receipts which may include, but is not necessarily limited to, the number of Customers charged at each
923 Service Level and Rate for each billing period.

924 8.3 Audit of Franchise Fees

925 In accordance with Exhibit D, Contractor shall prepare and provide to the District an annual audit of Gross
926 Receipts and Franchise Fees paid to the District.

927 The District General Manager may, at any time during the Term or within three (3) years following the
928 expiration or early termination of this Agreement, perform an audit of Contractor's billings and payment
929 of fees. Contractor shall fully cooperate with the District General Manager in any such audit. Should the
930 District or its agent perform this review and identify billing errors or other errors in payment of Franchise
931 Fees valued at one (1%) percent or more of Gross Receipts, Contractor shall, in addition to compensating
932 the District for lost fees and applicable delinquency penalties, reimburse the District's cost of the review.

933 **ARTICLE 9: CONTRACTOR'S COMPENSATION**
934 **AND RATE SETTING**

935 **9.1 General**

936 The Contractor's compensation for performance of all its obligations under this Agreement shall be Gross
937 Receipts. Contractor's compensation provided for in this Article shall be the full, entire and complete
938 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and
939 supplies, Transfer, Processing and Disposal fees, fees due to the District and County, taxes, insurance,
940 bonds, overhead, operations, profit, and all other things necessary to perform all the services required by
941 this Agreement in the manner and at the times prescribed. Nothing herein shall obligate the District to
942 provide any compensation to Contractor beyond Gross Receipts.

943 If Contractor's actual costs, including fees due to the District and County, are more than Gross Receipts,
944 Contractor shall not be compensated for the difference in actual costs and actual Gross Receipts. If
945 Contractor's actual costs (including profit requirements), including fees due to the District and County,
946 are less than the actual Gross Receipts, Contractor shall retain the difference.

947 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
948 Customers, Rates that are approved by the District General Manager for provision of services to
949 Customers. The Rates established by the District are maximum Rates and Contractor may, in its sole
950 discretion, charge Customers any amount up to and including the approved maximum Rate for a given
951 level of service.

952 Revenues received for the sale of Recyclable Materials including California Redemption Value revenues
953 have been considered in the establishment of Rates for services provided under this Agreement.
954 Contractor has the right to retain revenues from the sale of materials which were reused, Recycled, or
955 Processed. Neither Contractor nor the owner or operator of an Approved Recyclable Materials Processing
956 Facility is entitled to grant funds available through CalRecycle through its "Curbside Supplemental
957 Payments" for registered curbside Recycling programs or "City/County Payment Program" pursuant to
958 Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction Act.

959 **9.2 Rates and Annual Adjustments**

960 A. **General.** The District General Manager shall be responsible for approving maximum Rates as
961 described in this Article. If at any time during the Term of the Agreement, the Contractor
962 determines the need for a Rate that does not appear on the District-approved Rate schedule,
963 Contractor shall immediately notify the District General Manager and request establishment of
964 such Rate. For example, if a Customer requires Collection of Recyclable Materials in a five (5) cubic
965 yard Bin five (5) times per week and the District-approved Rate schedule does not include this
966 level of service, the Contractor must request that the District General Manager approve a Rate
967 for this level of service.

968 B. **Maximum Rates on Commencement Date.** Maximum Rates effective on the Commencement
969 Date of this Agreement shall be the Rates approved by the District General Manager that became
970 effective in January 2015. These maximum Rates shall be effective from the Commencement Date
971 of this Agreement through December 31, 2015.

972 C. **Annual Rate Adjustment.** Maximum Rates shall be adjusted annually in accordance with Exhibit
973 B.

974 9.3 Special Circumstances Rate Adjustments

975 Contractor accepts the risk for changes in cost of providing services and the Service Levels requested by
976 Customers and therefore the Special Circumstance adjustments to Rates shall be limited to: (i) a Change
977 in Applicable Law (as defined in Exhibit A); or (ii) a District-directed change in scope (pursuant to Section
978 4.8). If a Change in Applicable Law or a District-directed change in scope occurs and an adjustment to
979 maximum Rates is desired, the Contractor or District General Manager shall petition the District Board for
980 such an adjustment to the maximum Rates calculated in accordance with Section 9.2.

981 Contractor shall prepare an application for the Special Circumstances Rate adjustment calculating the net
982 financial effect on its operations (both increases and decreases of costs and revenues) resulting from the
983 Change in Applicable Law or District-directed change in scope (but not resulting from unrelated changes
984 in costs and revenues), clearly identifying all assumptions related to such calculations and providing the
985 underlying documentation supporting the assumptions. District General Manager shall evaluate the
986 application for reasonableness. As part of that review, the District General Manager and/or its agent shall
987 be granted access to the financial statements and accounting records maintained by the Contractor in
988 order to determine the reasonableness of the Contractor's application.

989 In the event of such an application for Special Circumstances Rate adjustment, it is understood that the
990 Contractor shall have the burden of demonstrating the reasonableness of the requested adjustment.

991 The Contractor may appeal the decision of the District General Manager to the District Board, which shall
992 then make the final determination as to whether an adjustment to the maximum Rates will be made, and
993 if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to any Special
994 Circumstances Rate adjustment, the District Board shall make the final determination as to whether an
995 adjustment to the maximum Rates will be made, and if a Rate adjustment is permitted, the amount of the
996 Rate adjustment.

997 9.4 Publication of Rates

998 Following Board approval and prior to the date Rate changes shall become effective, Contractor shall
999 provide written notice to Customers of Rate changes resulting from the annual Rate adjustment process.
1000 Such written notice shall be delivered to all Customers as part of the next quarterly or monthly billing
1001 statement which Contractor sends to Customers.

1002 **ARTICLE 10: INDEMNITY, INSURANCE,** 1003 **AND PERFORMANCE BOND**

1004 10.1 Indemnification

1005 A. **General.** Contractor shall indemnify, defend with counsel acceptable to District, and hold
1006 harmless (to the full extent permitted by law) District and its officers, officials, employees,
1007 volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability,

1008 loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation,
1009 including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out
1010 of or in connection with Contractor's performance under this Agreement, or its failure to comply
1011 with any of its obligations contained in the Agreement, except to the extent such loss or damage
1012 was caused by the negligence or willful misconduct of the District.

1013 B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire
1014 Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or
1015 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

1016 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
1017 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take
1018 all investigatory and/or remedial action reasonably required for the remediation of such
1019 environmental contamination. Prior to undertaking any investigatory or remedial action,
1020 however, Contractor shall first obtain the District's approval of any proposed investigatory or
1021 remedial action. Should Contractor fail at any time to promptly take such action, the District may
1022 undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse the
1023 District for all such expenses within thirty (30) calendar days of being billed for those expenses,
1024 and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed
1025 delinquent and subject to the delinquent fee payment provision of Section 8.2. These obligations
1026 are in addition to any defense and indemnity obligations that Contractor may have under this
1027 Agreement. The provisions of this Section shall survive the termination or expiration of this
1028 Agreement.

1029 Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees
1030 against claims arising from Contractor's delivery of Collected Materials to a Processing Facility,
1031 Disposal Site, or Transfer Station owned or operated by a third party, unless such claims are a
1032 direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended
1033 to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental
1034 Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), California Health
1035 and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C.
1036 Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability,
1037 and shall survive the expiration or earlier termination of this Agreement.

1038 C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold the District harmless
1039 against and from any and all claims, suits, losses, penalties, damages, and liability for damages of
1040 every name, kind and description, including attorneys' fees and costs incurred, attributable to the
1041 negligence or willful misconduct of Contractor in handling Excluded Waste.

1042 D. **Related to AB 939 and AB 341.** Contractor's duty to defend and indemnify herein includes all
1043 fines and/or penalties imposed by CalRecycle if the requirements of AB 939 and/or AB 341 are
1044 not met by the Contractor with respect to the waste stream Collected under this Agreement
1045 and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the
1046 failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays
1047 in providing information that prevents Contractor, the District, or the County from submitting
1048 reports to regulators in a timely manner.

1049 E. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
1050 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
1051 (Commonly Proposition 218), which impacts the Rates for the Franchise Services established in
1052 accordance with this Agreement, Contractor agrees to meet and confer with the District to discuss
1053 the impact of such Change in Law on either Party's ability to perform under this Agreement.

1054 If, at any time, a Rate adjustment determined to be appropriate by the District to compensate
1055 Contractor for increases in costs as described in this Agreement cannot be implemented for any
1056 reason, Contractor shall be granted the option to negotiate with the District, in good faith, a
1057 reduction of services equal to the value of the Rate adjustment that cannot be implemented. If
1058 the District and Contractor are unable to reach agreement on such a reduction in services, then
1059 Contractor may terminate this Agreement upon one hundred eighty (180) calendar days prior
1060 written notice to the District, in which case the Contractor and the District shall each be entitled
1061 to payment of amounts due for contract performance through the date of termination.

1062 Should a court of competent jurisdiction determine that the Contractor cannot charge and/or
1063 increase its Rates for charges related to any new or increased Franchise fee(s) and Governmental
1064 Fees and charges, Contractor shall reduce the Rates it charges Customers by a corresponding
1065 amount and shall discontinue payment of any new or increased Franchise fee(s), Governmental
1066 Fees, and/or charges which have been invalidated by the court.

1067 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the
1068 Rates established for services provided under this Agreement; rather this Section is provided
1069 merely to allocate risk of an adverse judicial interpretation between the Parties.

1070 F. **Provisions Survive Agreement.** This provision (i.e., Section 10.1) will survive the expiration or
1071 earlier termination of this Agreement and shall not be construed as a waiver of any rights by the
1072 District to indemnify from third parties.

1073 10.2 Insurance

1074 A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all
1075 times during the Term of this Agreement insurance that meets at a minimum the coverage and
1076 limits of insurance described in this Section 10.2.

1077 B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
1078 maintain, at its expense, the following coverages and requirements. The comprehensive general
1079 liability insurance shall include broad form property damage insurance.

1080 1. Insurance coverage shall be with limits not less than the following:

1081 (a) **Comprehensive General Liability** – \$1,000,000 combined single limit per occurrence
1082 for bodily injury, personal injury, and property damage.

1083 (b) **Automobile Liability** – \$1,000,000 combined single limit per accident for bodily
1084 injury and property damage (include coverage for hired and non-owned Vehicles).

1085 (c) **Workers' Compensation** – Statutory Limits/Employers' Liability.

- 1086 (d) **Pollution Legal Liability** – \$1,000,000 per claim/occurrence for bodily injury,
1087 property damage, and remediation of contaminated site.
- 1088 (e) **Excess/Umbrella Coverage** – Not less than \$2,000,000 in addition to the coverage
1089 required by subparagraphs (a), (b), and (d) above.
- 1090 2. The District, its officers, agents, and employees shall be named as additional insureds on
1091 all but the workers' compensation coverage.
- 1092 3. Said policies shall remain in force through the life of this Agreement and shall be payable
1093 on a "per occurrence" basis unless the District General Manager specifically consents in
1094 writing to a "claims made" basis. For all "claims made" coverage, in the event that the
1095 Contractor changes insurance carriers Contractor shall purchase "tail" coverage or
1096 otherwise provide for continuous coverage covering the Term of this Agreement and not
1097 less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall
1098 be required at any time that the Contractor changes to a new carrier prior to receipt of
1099 any payments due.
- 1100 4. The Contractor shall declare all aggregate limits on the coverage before commencing
1101 performance of this Agreement, and the District General Manager reserves the right to
1102 require higher aggregate limits to ensure that the coverage limits required for this
1103 Agreement as set forth above are available throughout the performance of this
1104 Agreement.
- 1105 5. The deductibles or self-insured retentions are for the account of Contractor and shall be
1106 the sole responsibility of the Contractor.
- 1107 6. Each insurance policy shall provide or be endorsed to state that coverage shall not be
1108 suspended, voided, canceled, reduced in coverage or in limits except after thirty (30)
1109 calendar days prior written notice (by certified mail, return receipt requested) has been
1110 given to the District General Manager, and in the case of delinquent insurance premiums
1111 after ten (10) Business Days.
- 1112 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-
1113 VII, unless otherwise approved by the District General Manager.
- 1114 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
1115 volunteers arising out of or in connection with this Agreement.
- 1116 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
1117 primary, including as respects the District, its officers, agents, employees, and volunteers.
1118 Any insurance maintained by the District shall apply in excess of, and not contribute with,
1119 insurance provided by Contractor's liability insurance policy.
- 1120 10. The Contractor shall waive all rights of subrogation against the District, its officers,
1121 employees, agents, and volunteers related to the performance of services under this
1122 Agreement.

1123 C. **Endorsements.** Prior to the Agreement Date, Contractor shall furnish the District General
1124 Manager with certificates or original endorsements reflecting coverage required by this
1125 Agreement. The certificates or endorsements are to be signed by a Person authorized by that
1126 insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and
1127 are subject to the approval of, the District General Manager before work commences.

1128 D. **Renewals.** During the Term of this Agreement, Contractor shall furnish the District General
1129 Manager with certificates or original endorsements reflecting renewals, changes in insurance
1130 companies, and any other documents reflecting the maintenance of the required coverage
1131 throughout the entire Term of this Agreement. The certificates or endorsements are to be signed
1132 by a Person authorized by that insurer to bind coverage on its behalf.

1133 E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
1134 by State law, and prior to the Agreement Date, Contractor shall file the following statement with
1135 the District. Signing of this Agreement by Contractor shall constitute the filing of such statement.

1136 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
1137 to be insured against liability for workers' compensation or to undertake self-insurance in
1138 accordance with the provisions of that code, and I will comply with such provisions before
1139 commencing any services required by this Agreement.

1140 The Person executing this Certificate on behalf of Contractor affirmatively represents that she/he
1141 has the requisite legal authority to do so on behalf of Contractor, and both the Person executing
1142 this Agreement on behalf of Contractor and Contractor understand that the District is relying on
1143 this representation in entering into this Agreement."

1144 10.3 Performance Bond

1145 Within seven (7) calendar days of the District's notification to Contractor that the District has executed
1146 this Agreement, Contractor shall file with the District a surety bond, payable to the District, securing the
1147 Contractor's performance of its obligations under this Agreement and such bond shall be renewed
1148 annually if necessary so that the performance bond is maintained at all times during the Term. The
1149 principal sum of the bond shall be equal to ten thousand dollars (\$10,000.00) and shall be adjusted every
1150 three (3) years, commencing on September 1, 2018, by the change in the CPI over the previous three year
1151 period. The bond shall be executed as surety by a corporation licensed and authorized to issue surety
1152 bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key
1153 Rating Guide, and that has a record of service and financial condition satisfactory to the District. The bond
1154 shall be in a form approved by the District. In lieu of the corporate surety bond, Contractor may provide
1155 District a letter of credit, cash bond, or other security acceptable and in a form satisfactory to the District
1156 General Manager.

1157 Any action by District to proceed against the bond shall not limit or affect any other rights or remedies
1158 available to District under the Agreement or in courts of law or equity, notwithstanding the foregoing.

1159 In the event District requires a performance bond in an amount greater than the amount above, the
1160 District may request that Contractor increase the principal sum of the bond and the District shall pay for
1161 or reimburse Contractor for the incremental increase in the cost of the performance bond. Contractor
1162 shall cooperate in the application for the increased bond.

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ARTICLE 11: DEFAULT, REMEDIES AND TERMINATION

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11.1 Default and Remedies

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A. **Events of Default.** Each of the following shall constitute an Event of Default:

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1. Any transaction, without any requirement of notice or cure opportunity, attempted or completed, not complying with the requirements of Section 11.3 hereof.

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2. The failure by the Contractor for any reason to consistently Collect or deliver Solid Waste, Recyclable Materials, and Organic Materials to Approved Facilities.

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3. Any criminal conviction, plea bargain, or settlement, without any requirement of notice or cure opportunity, of Contractor, its officers, managers, or employees related directly or indirectly to performance of this Agreement or any other agreement held with the District.

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4. Failure or refusal of the Contractor to perform any term, covenant, obligation or condition in this Agreement, other than a failure or refusal described in items (1), (2), or (3) above, except that no such failure or refusal shall give the District the right to terminate this Agreement under this Section unless:

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(i) The District has given prior written notice to the Contractor, stating the existence of a specific failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Contractor and which will, in the District's opinion, give the District a right to terminate this Agreement for cause under this Section unless such default is corrected within fifteen (15) days, and

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(ii) The Contractor has neither challenged in an appropriate forum the District's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or developed an action plan for correcting such breach or refusal to perform, to be approved by the District General Manager, within such fifteen (15) day period from receipt of the notice given pursuant to the clause (i) of this subsection (but if the Contractor shall have submitted to District an action plan to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Contractor remains in compliance with the action plan and continues to take such steps to correct such default in a timely manner).

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5. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Contractor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Contractor's property or business.

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6. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition under the Bankruptcy Act, but no such adjudication shall be regarded as final unless and until

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- 1200 the same is no longer being contested by the Contractor nor until the order of the adjudication
1201 is no longer appealable.
- 1202 7. The failure of the Contractor to provide or maintain the performance bond required pursuant
1203 to Section 10.3 hereof.
- 1204 8. Any failure by the Contractor to comply with Applicable Law following the specified notice
1205 and opportunity to cure.
- 1206 9. Failure of the Contractor to timely implement the operational changes and adjusted
1207 maximum Rates resulting from the Change in Law or District-directed change in scope. The
1208 Contractor shall have thirty (30) days after notice of breach from the District to implement
1209 the operational changes. Should the Contractor thereafter not implement the operational
1210 changes it shall be in default of the Agreement. In addition to being liable for all damages and
1211 penalties to the District resulting from such default, the District may terminate the Agreement
1212 in accordance with Section 11.1.B.
- 1213 B. **Right to Terminate Upon Default.** Upon a determination by the District General Manager that an
1214 Event of Default has occurred, the District Board shall conduct a hearing upon ten (10) days notice
1215 to the Contractor to determine if termination of the Agreement is in the best interests of the public
1216 health, safety, and general welfare of the citizens of the District. If the fact finder makes such a
1217 determination, the Contractor shall be deemed to have waived any right it may have under
1218 Applicable Law to notice of termination in excess of those notice provisions explicitly set forth
1219 herein.
- 1220 C. **District's Remedies Cumulative: Specific Performance.** The District's right to terminate this
1221 Agreement under this Section 11.1 is not exclusive, and the District's termination of the Agreement
1222 shall not constitute an election of remedies. Instead, they shall be in addition to any and all other
1223 legal and equitable rights and remedies which the District may have, including but not limited to
1224 specific performance, and fees and expenses incurred by or on behalf of the District in enforcing
1225 payment or performance of the Contractor's obligations hereunder if such non-performance results
1226 in a judicially determined Event of Default by the Contractor.
- 1227 D. **Possession of Property upon Termination or Suspension.** In the event of termination or suspension
1228 for default, the District shall have the right to take possession of any and all of Contractor's
1229 equipment and other property used or useful in the Collection, Transportation, Transfer, Processing,
1230 and Disposal of Solid Waste, Recyclable Materials, or Organic Materials and the billing and collection
1231 of fees for these services and to use such property. The District shall have the right to retain the
1232 possession of such property until such time as Contractor remedies the default or substitute services
1233 can be provided by another contractor. If the District retains possession of Contractor's equipment
1234 or other property after the period of time for which Contractor has already been paid by means of
1235 bills issued in advance of providing service for the service involved, the Contractor shall be entitled
1236 to the reasonable rental value of such property (which shall be offset against any damages due the
1237 District for the Contractor's default). Contractor shall furnish District with immediate access to all
1238 of its business records related to its Customers and billing of accounts for Collection services.

1239 **11.2 Liquidated Damages**

1240 In addition to any other remedies provided for in this Agreement, the District General Manager may levy
1241 a charge in the amounts listed below for the Contractor's failure to meet the requirements enumerated
1242 below that constitute a breach of the terms and conditions of this Agreement. The District General
1243 Manager's decision to levy such a charge shall not be deemed an election of remedies, but shall be
1244 cumulative with any other remedies provided for in this Agreement. The District General Manager's
1245 decision not to levy any such charge shall not be deemed a waiver of any breach by Contractor under this
1246 Agreement. The Parties agree that the following Liquidated Damages represent a reasonable estimate of
1247 the amount of such damages, considering all of the circumstances existing on the Agreement Date,
1248 including the relationship of the sums to the range of harm to the District that reasonably could be
1249 anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this
1250 Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that
1251 each Party had ample opportunity to consult with legal counsel and obtain an explanation of this
1252 Liquidated Damage provision at the time that this Agreement was entered into.

- 1253 A. **Excessive complaints.** When Contractor or the District General Manager receives complaints from
1254 more than one percent (1%) of its client base within a six (6) month period, Contractor will be
1255 assessed twenty-five dollars (\$25) per complaint per occurrence during that period; and an
1256 additional twenty-five dollars (\$25) each twenty-four (24) hours until the complaint is reasonably
1257 resolved. For purposes of this section, "complaints" shall mean substantive and credible Customer
1258 notifications to the Contractor or the District General Manager of missed pick-ups, property
1259 damage, missed commitments, employee misconduct or poor quality of service (e.g. litter on
1260 property or public right-of-way or misplacement of Containers).
- 1261 B. **Failure to Remit Fees or Submit Reports.** Failure to remit the fees due to the District and/or County
1262 as required by Article 8, or file required reports in an accurate and complete manner by the fifth
1263 working day following the due date of such fees or reports: fifty dollars (\$50) per day for the first
1264 five (5) days, then five hundred dollars (\$500) per day for each day after the first five (5) days.
- 1265 C. **Failure to Provide District Access.** Failure to provide access to Operating Assets or any other
1266 documents or information within fourteen (14) days of a request by the District General Manager:
1267 one hundred dollars (\$100) per day per occurrence.
- 1268 D. **Failure to Properly Charge Customer.** Failure to charge a Customer at or below the maximum
1269 District-approved Rate, where not refunded on the next invoice: fifty dollars (\$50) per occurrence
1270 per Customer where the number of Customers overcharged is less than twenty-five (25); five
1271 hundred dollars (\$500) per occurrence per Customer where the number of Customers overcharged
1272 is twenty-five (25) or more. In addition, Contractor shall be responsible for refunding any amount
1273 overcharged to each Customer determined to be overcharged. Contractor shall not be entitled to
1274 any refund from the District for Franchise fees or other fees paid on overcharged amounts.
- 1275 E. **Unauthorized Collection Hours.** For Collection outside permitted hours: one hundred dollars (\$100)
1276 per occurrence.
- 1277 F. **Use of Unauthorized Facilities.** Delivery of Collected Solid Waste, Recyclable Materials, or Organic
1278 Materials to a location that is not an Approved Facility for Transfer, Processing, and/or Disposal of
1279 the material: one hundred dollars (\$100) per Ton.

1280 The District General Manager shall give the Contractor written notice of charges levied pursuant to this
1281 Section. Any such damages shall be paid directly to the District, and may not be included by the Contractor
1282 as an expense in calculating a request for an upward adjustment in the Rate schedule or offset against
1283 any fees.

1284 The decision of the District General Manager shall be final and binding on the Contractor unless the
1285 Contractor files a Notice of Appeal with the Secretary of the District Board within fifteen (15) days of
1286 receipt of the District General Manager's decision. The Notice of Appeal shall be in writing and shall
1287 contain a detailed statement of the basis for the appeal. Upon receipt of the Notice of Appeal, the District
1288 General Manager shall set the matter for a public hearing within thirty (30) days. The District General
1289 Manager shall give the Contractor and any interested Person requesting the same, ten (10) days written
1290 notice of the time and place of the hearing. At the hearing, the District Board shall determine, based on
1291 the record, the appropriate action to be taken. The decision of the District Board shall be final and
1292 conclusive.

1293 11.3 Uncontrollable Circumstances

1294 A. **Excuse from Performance.** In the event that a Party is prevented from performing its obligations
1295 under this Agreement by an Uncontrollable Circumstance, it shall not constitute a default of this
1296 Agreement, so long as the Party in good faith has used its best efforts to perform its respective
1297 obligations.

1298 The Party claiming excuse from performance shall, within five (5) days after such Party has notice
1299 of the effect of such cause, give the other Party notice of the facts constituting such cause and
1300 asserting its claim to excuse under this Section. Specifically, such information shall include the
1301 following:

- 1302 1. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- 1303 2. The date the Uncontrollable Circumstance began and the cause thereof, its estimated
1304 duration, and the estimated time during which the performance of such Party's obligations
1305 hereunder will be delayed;
- 1306 3. Its estimated impact on the other obligations of such Party under this Agreement; and
- 1307 4. Potential mitigating actions which might be taken by the Contractor or District and any areas
1308 where costs might be reduced and the approximate amount of such cost reductions.

1309 While the delay continues, the Contractor or District shall give daily notice to the other Party
1310 updating the information previously submitted.

1311 In the event that either Party validly exercises its rights under this Section, the Parties hereby waive
1312 any claim against each other for any damages sustained thereby.

1313 B. **District's Right to Terminate.** The partial or complete interruption or discontinuance of the
1314 Contractor's services caused by one (1) or more of the events described in this Section 11.3 shall
1315 not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing,
1316 however, if the Contractor is excused from performing its obligations hereunder because of any

1317 Uncontrollable Circumstance for a period of thirty (30) days or more, the District shall nevertheless
1318 have the right, in its sole discretion, to terminate this Agreement by giving sixty (60) days notice.

1319 C. **Work Stoppages.** Notwithstanding anything in this Agreement to the contrary, any strikes, work
1320 stoppages, or other labor disputes or disturbances occurring with respect to an activity performed
1321 or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with
1322 the Operating Assets or the Franchise Services and which last beyond seven (7) days shall not
1323 constitute an Event of Default under Section 11.1.A.

1324 However, in the event of such occurrence which prevents or diminishes the ability of Contractor to
1325 Collect, Transport, Transfer, Process, and/or Dispose of any or all the Solid Waste, Recyclable
1326 Materials, and/or Organic Materials which it is obligated under this Agreement to Collect, Transport,
1327 Transfer, Process, and Dispose of for a period of more than seventy-two (72) hours and the District
1328 General Manager, in his or her discretion, should find that such accumulation endangers or menaces
1329 the public health, safety or welfare, then District shall have the right, upon twenty-four (24) hours
1330 notice to Contractor, to find the Contractor in Default and to contract with any other third parties
1331 to Collect, Transport, Transfer, Process, and/or Dispose any and all Solid Waste, Recyclable
1332 Materials, and Organic Materials which Contractor would otherwise be obligated to Collect,
1333 Transport, Transfer, Process, and/or Dispose pursuant to this Agreement. Contractor agrees that in
1334 such event, it will fully cooperate with District and its third-party contractor to affect such transfer
1335 of operations in as smooth and efficient a fashion as is practicable. All costs, fees, rates or other
1336 expenses incurred by District and/or its third-party contractor that exceed those that would have
1337 been incurred by District had no such emergency arisen shall be the responsibility of the Contractor
1338 and shall be paid to District within thirty (30) days of receipt of written notice to pay.

1339 11.4 Right to Demand Assurances of Performance

1340 If the District believes in good faith that the Contractor's ability to perform under the Agreement has been
1341 placed in substantial jeopardy by one (1) of the events enumerated below, the District General Manager
1342 may, at his/her option and in addition to all other remedies the District may have, require that Contractor
1343 provide District General Manager with sufficient proof that none of the events enumerated below will in
1344 fact impair Contractor from performing its obligations under the Agreement:

1345 A. Contractor is the subject of any labor unrest, including work stoppages or slowdown, sick-out,
1346 picketing, or other concerted job action;

1347 B. Contractor appears, in the reasonable judgment of the District, to be unable to regularly pay its bills
1348 as they become due; or,

1349 C. Contractor is the subject of a civil or criminal judgment or order entered by a federal, State, County,
1350 regional, or local agency for violation of an environmental law.

1351 If the Contractor fails or refuses to provide to the District adequate information to establish its ability to
1352 perform within thirty (30) days, such failure or refusal shall be an Event of Default for purposes of Section
1353 11.1.A.

1354 **11.5 Waiver of Defenses**

1355 In order to ensure the non-interruption of a vital public service, except as provided in Section 11.3, the
1356 Contractor acknowledges that it is solely responsible for providing the Franchise Services described
1357 herein, and hereby irrevocably waives the following defenses to the payment and performance of its
1358 obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion,
1359 impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-
1360 existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that
1361 may be a basic assumption of the Contractor with regard to any provision of this Agreement.

1362 **ARTICLE 12: MISCELLANEOUS PROVISIONS**

1363 **12.1 Relationship of the Parties**

1364 Neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided
1365 or contract obligations or liabilities assumed by the other Party hereto, whether accrued, absolute,
1366 contingent or otherwise, or whether due or to become due. The Contractor is an independent Contractor
1367 and Agreement holder and nothing in this Agreement shall be deemed to constitute either Party a partner,
1368 agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

1369 **12.2 Notice to Parties**

1370 All notices required or provided for in this Agreement shall be provided to the Parties at the following
1371 addresses, by email and by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or
1372 certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon
1373 receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may
1374 change the address to which notice is given by giving notice as provided herein.

1375 To District:

1376 Kensington Police Protection and Community Service District Attn: Greg Harman
1377 General Manager/ Chief of Police
1378 217 Arlington Avenue
1379 Kensington, CA 94707
1380 gharman@kensingtoncalifornia.org

1381 To Contractor:

1382 Bay View Refuse and Recycling, Inc.
1383 2525 Garden Tract Road
1384 Richmond, CA 94801
1385 bcrsgreg@aol.com
1386

1387 **12.3 Resolution of Disputes**

1388 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
1389 time during the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give
1390 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
1391 meet and confer in good faith to resolve any dispute that may arise. In the event such dispute cannot be
1392 resolved by the Parties themselves within thirty (30) days of such notice, either Party may propose the
1393 appointment of a mediator. If the other Party is in agreement, both Parties may refer the matter in dispute
1394 to such mediator for mediation. If through the mediation process, the Parties are unable, within thirty
1395 (30) days thereafter, to reach a resolution as to the matter in dispute, the matter shall be referred by
1396 either Party to arbitration. Mediation and arbitration shall be conducted by JAMS, San Francisco, and
1397 arbitration shall be conducted according to JAMS Arbitration Rules and Procedures. In the event of
1398 mediation, the Parties shall each pay their own attorney fees and costs. If the dispute proceeds to
1399 arbitration, the arbitrator may award attorney fees and costs to the prevailing Party."

1400 **12.4 Actions of the District in its Governmental Capacity**

1401 Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the District in its
1402 governmental or regulatory capacity, or as limiting the right of the Contractor to bring any legal action
1403 against the District, not based on this Agreement, arising out of any act or omission of the District in its
1404 governmental or regulatory capacity.

1405 **12.5 Binding Effect**

1406 This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee
1407 acquiring an interest hereunder consistent with the provisions hereof.

1408 **12.6 Amendments**

1409 Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except
1410 by written agreement duly executed by both Parties.

1411 **12.7 Further Assurance**

1412 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or
1413 reasonably requested by the other in order to give full effect to this Agreement.

1414 **12.8 Assignment and Transfer of Agreement**

1415 A. **Consent of the District Required.** This Agreement shall not be transferred, sold, pledged,
1416 hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred,
1417 sold, pledged, hypothecated, leased, or assigned, either in whole or in part, nor shall title hereto or
1418 thereto, either legal or equitable, or any right, interest or property herein or therein, pass to or vest
1419 in any Person, except the Contractor, either by action or inaction of the Contractor, or by operation
1420 of law, without the prior written consent of the District, which consent shall not be unreasonably
1421 withheld or delayed .

1422 The Contractor shall provide written notice of any request to assign or transfer this Agreement, and
1423 shall provide the District with any information requested by the District in connection with the

1424 proposed transfer, including but not limited to information regarding the general business
1425 qualifications of the proposed assignee, as well as its ability to perform the Franchise Services and
1426 a statement of its financial resources. The Contractor's notice of request to assign this Agreement
1427 shall contain a statement of the allocation of dollars in the consideration to be paid by the assignee
1428 to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset transfer which has any
1429 connection with said assignment, all as agreed upon by the Contractor and the assignee. The notice
1430 shall also contain a statement showing the method of payment for the consideration and whether
1431 the Contractor proposes to hold some security interest as security for the payment of the unpaid
1432 balance of the consideration.

1433 The District shall respond to any such request within ninety (90) days after receipt of any
1434 information requested by the District pursuant to the preceding sentence. The Contractor
1435 acknowledges that, prior to approving such a transfer, the District must find that such a transfer is
1436 in the best interests of the public health, safety, and general welfare. Any attempt by the Contractor
1437 to effectuate any of the foregoing without such consent of the District shall be null and void, and
1438 any effectuation of any of the foregoing without such consent of the District shall constitute an
1439 Event of Default resulting in the immediate termination of this Agreement as provided in Section
1440 11.1.A hereof.

1441 B. **Consolidation, Merger, Sale, Transfer, and Change in Control.** Subject to the provisions of Section
1442 12.8.A above, the Contractor shall not, without the prior written consent of the District which may
1443 be withheld or delayed in its sole and absolute discretion, consolidate with or merge with another
1444 entity or permit one or more other entities to consolidate with or merge into it.

1445 C. **Reimbursement of Cost Related to Assignment Review.** If the Contractor requests the consent of
1446 the District for any transaction described in Section 12.8 hereof, the proposed assignee, as a
1447 condition of assignment, shall reimburse the District for all costs and expenses incurred by the
1448 District in reviewing, examining, and analyzing the request, including all direct and indirect
1449 administrative expenses of the District and consultants and attorney's fees and expenses. Along
1450 with its written request for the review of the assignment, Contractor shall remit to District an
1451 assignment review fee in the amount of thirty thousand dollars (\$30,000) which shall be intended
1452 to compensate the District for the costs of its review of the requested assignment. Such fee shall
1453 not be refundable to the Contractor in the event that the District determines, in its sole discretion,
1454 that the proposed assignment is unacceptable. In the event that the District's total costs for the
1455 review of the assignment exceed thirty thousand dollars (\$30,000) the Contractor shall compensate
1456 the District for its actual and reasonable costs within thirty (30) days of receiving the District's
1457 invoice. Such costs shall be supported with evidence of the expense or cost incurred. If the District's
1458 total costs for the review of the assignment are less than thirty thousand dollars (\$30,000), the
1459 District shall remit to the Contractor the difference between its actual costs and thirty thousand
1460 dollars (\$30,000).

1461 D. **Transfer Fee.** On the date the District approves the Contractor's written request for an assignment,
1462 Contractor or the assignee shall pay the District a transfer fee in the amount of one percent (1%) of
1463 the Gross Receipts for the most-recently completed calendar year. The District's approval of such
1464 an assignment shall be conditioned on the receipt of the transfer fee.

1465 **12.9 Interpretation**

1466 In this Agreement, unless the context otherwise requires:

1467 A. **References Hereto.** The terms "hereby," "hereof," "herein," hereunder," and any similar terms refer
1468 to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before,
1469 the Agreement Date.

1470 B. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the
1471 feminine and neuter genders, and words importing the singular number mean and include the plural
1472 number and vice versa.

1473 C. **Persons.** Words importing Persons include firms, companies, associations, general partnerships,
1474 limited partnerships, trusts, business trusts, corporations, non-profit corporations, and other legal
1475 entities, including Governmental Bodies, as well as individuals.

1476 D. **Headings.** The table of contents and any headings preceding the text of the articles, sections, and
1477 subsections of this Agreement shall be solely for convenience of reference and shall not constitute
1478 a part of this Agreement, nor shall they affect its meaning, construction, or effect.

1479 E. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with
1480 respect to the transactions contemplated by this Agreement. Furthermore, nothing in this
1481 Agreement is intended to confer on any Person other than the Parties hereto and their respective
1482 successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

1483 F. **Reference to Days.** All references to days herein are to calendar days, including Saturdays, Sundays,
1484 and holidays, except as otherwise specifically provided.

1485 G. **Units of Measure.** Weights or volumes described herein may be reported in either metric or U.S.
1486 Standard terms of measurement, unless State or federal law or regulation specifies the system of
1487 measurement to be used.

1488 H. **Counterparts.** This Agreement may be executed in any number of original counterparts. All such
1489 counterparts shall constitute but one and the same Agreement.

1490 I. **Applicable Law.** This Agreement shall be governed by and construed in accordance with Applicable
1491 Law.

1492 J. **Severability.** If any clause, provision, subsection, section, or article of this Agreement shall be
1493 determined to be invalid by any court of competent jurisdiction, then the Parties hereto shall:

1494 1. Promptly meet and negotiate a substitute for such clause, provision, section, or article which
1495 shall, to the greatest extent legally permissible, effect the intent of the Parties therein.

1496 2. If necessary or desirable to accomplish item (1) above, apply to the court having declared such
1497 invalidity for a judicial construction of the invalidated portion of this Agreement.

1498 3. Negotiate such changes in, substitutions for or additions to, the remaining provisions of this
1499 Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above,

1500 to effect the intent of the Parties in the invalid provision. The invalidity of such clause,
1501 provision, subsection, section, or article shall not affect any of the remaining provisions
1502 hereof, and this Agreement shall be construed and enforced as if such invalid portion did not
1503 exist.

1504 12.10 Jurisdiction

1505 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1506 courts of the Contra Costa County in the State of California, which shall have exclusive jurisdiction over
1507 such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be
1508 performed in Contra Costa County.

1509 12.11 Entire Agreement

1510 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with
1511 respect to the matters covered herein. Each of the Exhibits identified as Exhibits "A" through "E" is
1512 attached hereto and incorporated herein and made a part hereof by this reference.

1513

1514

1515

1516 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below:

1517

1518

1519 Kensington Police Protection
1520 and Community Service District

Bay View Refuse and Recycling Services, Inc.

1521

1522

1523

1524 By: Len Welsh
1525 Len Welsh, President, Board of Directors

By: Lewis Figone
Lewis Figone, President

1526

1527 Dated: November 19, 2014

Dated: 11/14/14, 2014

1528

1529

1530 Attest:

1531

1532 By: Cary E. Hannon
1533 (District Board of Directors Secretary)

1534 Gabriel E. Hannon
1535

1536 Printed name

1537

1538 Dated: 11-19, 2014

1539

1540

EXHIBIT A DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this Agreement:

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

"AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

"Affiliate(s)" means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity, or under direct or indirect common management or control with such person, corporation or other entity. As between any two (2) or more persons or entities, when ten percent (10%) of one is owned, managed, or controlled by another, they are hereunder Affiliates of one another.

"Agreement" means this Agreement for Solid Waste, Recyclable Materials, and Organic Materials Franchise Services between the District and the Contractor.

"Agreement Date" means the date the later of the two Parties executed the Agreement.

"Applicable Law" means any law, rule, regulation, requirement, guideline, permit, action, determination, or order of any Governmental Body having jurisdiction, applicable from time to time to the Franchise Services; the Operating Assets; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation, or maintenance of any of the Operating Assets; or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, governmental protection, accommodation of the disabled, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, the payment of per-Ton charges on Solid Waste, Recyclable Materials, and Organic Materials facilities imposed by a governmental entity other than the District.

"Approved Disposal Facility" means the Keller Canyon Landfill located at 901 Bailey Road, Pittsburg, CA or Potrero Hills Landfill located at 3675 Potrero Hills Road, Suisun City, CA.

"Approved Facilities" means Approved Disposal Facility, Approved Recyclable Materials Processing Facility, Approved Organic Materials Processing Facility, and Approved Transfer Facility.

"Approved Organic Materials Processing Facility" means the composting facility at the West Contra Costa Sanitary Landfill (WCCSL) Organics Processing Facility located at the foot of Parr Boulevard, Richmond, CA.

EXHIBIT A DEFINITIONS

"Approved Recyclable Materials Processing Facility" means the West County Resource Recovery Facility at 101 Pittsburg Avenue, Richmond, CA or the Newby Island Recycling Facility (also known as BFI's Recyclery) located at 1601 Dixon Landing Road, San Jose CA.

"Approved Transfer Facility" means the Golden Bear Waste Recycling Center located at the foot of Parr Boulevard, Richmond, CA.

"Back-yard Service" means service provided by Contractor in which Contractor Collects Solid Waste, Recyclable Materials, and/or Organic Materials from the Customer's back-yard or sideyard.

"Bureau of Labor Statistics (BLS)" shall mean the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.

"Bin" means a Container with capacity of approximately one (1) to six (6) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection Vehicle.

"Bulky Waste" means large and small household appliances, furniture, tires, carpets, mattresses, and similar large items which cannot be contained within a standard Container, or which does not fit in or causes harm to Collection Vehicles.

"Business Days" mean days during which the District offices are open to do business with the public.

"CalRecycle" means the Department of Resources Recycling and Recovery, and any Governmental Body which succeeds to its duties and powers under Applicable Law.

"Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 35, 65, 95 gallons (or similar volumes approved by the District).

"CEQA" means the California Environmental Quality Act codified at California Public Resources Code Section 21000 et seq., as amended or superseded, and the regulations promulgated thereunder.

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the Contractor of the Franchise Services (except for payment obligations):

- The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Agreement Date of any Applicable Law; or,
- The order or judgment of any Governmental Body, on or after the Agreement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the District or of the Contractor, whichever is asserting the occurrence of a Change in Law provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed

EXHIBIT A DEFINITIONS

as such a willful or negligent action, error or omission or lack of reasonable diligence.

"Collect" or "Collection" (or any variation thereof) means the act of collecting Solid Waste, Recyclable Materials, and Organic Materials at the place of generation in the District Franchise Area.

"Collection Premises" means the Residential Premises, Commercial Premises, or both for which the Contractor is authorized to provide Collection services.

"Commencement Date" means the date the Franchise Services required by this Agreement commence, which is September 1, 2015.

"Commercial" shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property, which are permitted under applicable zoning regulations and are not the primary use of the property. For the purposes of this Agreement, Commercial also includes Multiple-Unit Dwellings with five (5) or more units.

"Compactor" means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection Vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection Vehicles.

"Construction and Demolition Debris (C&D)" includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Waste.

"Consumer Price Index (CPI)" shall mean the All Urban Consumers Index (CPI-U) compiled and published by the BLS, using the following parameters:

- Area – San Francisco-Oakland-San Jose, CA
- Item – All Items
- Base Period – Current 1982-84=100
- Not seasonally adjusted
- Periodicity – Bi-Monthly
- Series Identification Number – CUURA422SA0

"Container(s)" mean Bins, Carts, Compactors, and Drop Boxes or other storage units that are intended to be serviced by a Collection vehicle.

"Contractor" means Bay View Refuse and Recycling Service, Inc., a California corporation. Contractor organized and operating under the laws of the State and its officers, directors, employees, agents,

EXHIBIT A DEFINITIONS

companies, related-parties, affiliates, subsidiaries, and Subcontractors. As of the Agreement Date, the Lewis Figone Revocable Trust 2014 owns 100% of the company stock.

"**County**" means the County of Contra Costa, California, a political subdivision of the State, acting through its Board of Supervisors.

"**Curb**" or "**Curbside**" (or any variation thereof) means the location of a Collection Container for pick-up, where such Container is placed on the public or private street or alley against the face of the Curb, or where no Curb exists, Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

"**Customer**" means Person who subscribes for service with Contractor for Collection of Solid Waste, Recyclable Materials, and/or Organic Materials pursuant to this Agreement and applicable ordinances of the County, including the County's mandatory subscription ordinance.

"**Customer Type**" means the Customer's sector category including, but not limited to, Residential, Commercial and District Facilities.

"**Designated Collection Location**" refers to the location, at each Collection Premises where Containers of Solid Waste, Recyclable Materials, and Organic Materials are customarily placed for Collection, all in accordance with Section 4.6 herein.

"**Dispose**" or "**Disposal**" (or any variation thereof) means the final disposition of Solid Waste at a landfill Disposal site.

"**District**" refers to the Kensington Police Protection and Community Services District, an authority maintained by the unincorporated community of Kensington, California.

"**District Board**" refers to the Board of Directors the Kensington Police Protection and Community Services District.

"**District General Manager**" means the District General Manager or their designated representative who is responsible for the administrative management of this Agreement.

"**District Fees**" shall mean those fees described in Article 8 of this Agreement excluding fees due to the County.

"**Drop Box**" means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is serviced by a roll-off Collection Vehicle.

"**Electronic Waste (E-Waste)**" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular

EXHIBIT A DEFINITIONS

telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste and thus require special handling, Processing, or Disposal.

"Emergency Services" means Franchise Services, other than those specified under this grant of Agreement, provided during or as a result of an emergency which threatens the public health or safety, as determined by the District General Manager.

"Event of Default" means only the events described in Section 11.1.A.

"Excluded Waste" means Hazardous Waste, Infectious Waste, U-Waste, E-Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or the District to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

"Food Scraps" means those discarded materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

"Franchise" means the right granted by the District to Contractor to provide Solid Waste, Recyclable Materials, and Organic Materials Collection and Transport services within the Franchise Area in accordance with the terms and conditions of this Agreement.

"Franchise Area" means the geographic area generally known as the unincorporated community of Kensington in the western portion of the County described in Exhibit E to this Agreement. Exhibit E may be amended from time to time to reflect changes of boundaries of the Franchise Area in such a manner as to identify each alteration to the Franchise Area and the effective date thereof.

"Franchise Fee" means the fees paid by Contractor to the District for the privilege to hold the rights granted by this Agreement.

"Franchise Services" means all of the duties and obligations of the Contractor hereunder.

"Generator" means any person that generates, produces, or discards Solid Waste, Recyclable Materials, and Organic Materials.

EXHIBIT A DEFINITIONS

"**Governmental Body**" means any federal, state, county, city, district, or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"**Governmental Fee**" shall mean any fee or surcharge imposed by a governmental entity other than the District including without limitation the State, County, or Local Enforcement Agency. Governmental Fees are a component of the Tipping Fee.

"**Green Waste**" means grass, lawn clippings, shrubs, plants, weeds, small branches and other forms of organic materials generated from landscapes or gardens, separated from other Solid Waste. Green Waste is a subset of Organic Materials.

"**Gross Receipts**" shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials.

"**Hazardous Waste**" means:

- A. Any waste which by reason of its quality, concentration, composition, or physical, chemical, or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged, or any waste which is defined or regulated as a Hazardous Waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time, including, but not limited to:
 - 1. The Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281.
 - 2. The Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766.
 - 3. The California Health & Safety Code Section 25117 (west 1992 & Supp. 1998).
 - 4. The California Public Resources Code Section 40141 (West 1996).
 - 5. Future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage, or disposal of toxic substances or Hazardous Wastes.

- B. Radioactive materials which are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

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"Household Hazardous Waste" means waste materials determined by CalRecycle, the Department of Toxic Substances Control, the State Water Resources Control Board, or the Air Resources Board to be:

- A. Of a nature that they must be listed as hazardous in State statutes and regulations;
- B. Toxic/ignitable/corrosive/reactive; and,
- C. Carcinogenic/mutagenic/teratogenic

which are discarded from Residential Premises as opposed to businesses. Household Hazardous Waste shall not include unacceptable waste.

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions or by any insurance company which has issued a policy with respect to the Operating Assets or the Franchise Services.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Line of Business" means any of the following services provided by the Contractor: Residential Solid Waste, Residential Recyclable Materials, Residential Organic Materials, Commercial Solid Waste, Commercial Recyclable Materials, and Commercial Organic Materials.

"Liquid Waste" means watered or dewatered sewage or sludge.

"Liquidated Damages" means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 11.2.

"Medical Waste" means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs, and waste which includes animal wastes or parts from slaughterhouses or rendering plants.

"Multiple-Unit Dwelling" means any building in the District, other than a Single-Unit Dwelling, lawfully occupied for human shelter.

"Multi-Family" means any Multiple-Unit Dwelling with five or more dwelling units and/or refers to programs serving the Customers living in such properties.

EXHIBIT A DEFINITIONS

"**Operating Assets**" means all real and personal property of all kind, which is owned, leased, managed, or operated by or under contract to the Contractor for providing the Franchise Services, including without limitation the Containers, Vehicles, Transfer stations, maintenance and storage facilities, administrative facilities, and other equipment, machinery, parts, supplies and tools.

"**Organic Materials**" means any combination of Food Scraps and Green Waste.

"**Owner**" means the person holding the legal title or having a right to possession of the real property constituting the Collection Premises to which Solid Waste, Recyclable Materials, or Organic Materials Collection service is provided or required to be provided hereunder.

"**Party or Parties**" refers to the District and Contractor, individually or together.

"**Person(s)**" means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

"**Premises**" means any land or building in the District where Solid Waste, Recyclable Materials, and Organic Materials are generated or accumulated.

"**Process**" or "**Processing**" means to prepare, treat, Recycle, or convert through some special method.

"**Processing Facility**" means a permitted facility in which materials are sorted, separated, or otherwise manipulated for the purposes of Recycling, reuse, or Composting.

"**Rate**" means the maximum amount, expressed as a dollar unit, approved by the District that the Contractor may bill a Customer for providing Franchise Services under this Agreement. A Rate has been established for each individual Service Level. The Rates approved by District are the maximum Rate that Contractor may charge a Customer and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the District.

"**Rate Adjustment Factor**" shall mean the amount, expressed as a percentage, by which each of the operating, Disposal, Processing, and fee components of each Rate are adjusted. The Rate Adjustment Factor for each component shall be calculated separately.

"**Recovered Materials**" means the products, excluding Residual Waste, produced by the Processing of Recyclable Materials and Organic Materials.

"**Recyclable Materials**" means materials, by-products, or components of such materials that are set aside, handled, or packaged for the purpose of being Recycled. Recyclable Materials include glass, paper, cardboard, wood, concrete, plastic, ferrous and non-ferrous metal, aluminum and any other materials that are capable of being Recycled.

"**Recycle**," "**Recycled**," or "**Recycling**" means the Process of collecting, sorting, cleansing, treating, reconstituting, or otherwise Processing materials that are or would otherwise become Solid Waste and

EXHIBIT A DEFINITIONS

returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

"Residential" shall mean of, from, or pertaining to a Single-Unit Dwelling Premises or Multi-Unit Dwelling Premises with four (4) or less units including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments with four (4) or less units.

"Residual Waste" means any material remaining after the Processing, by any means and to any extent of Solid Waste, Recyclable Materials, or Organic Materials.

"Routing and Collection System" means the Routing and Collection System for Solid Waste, Recyclable Materials, and Organic Materials which is in effect as of the Agreement Date.

"Scrap Materials" means any materials which are separated by type of Generator thereof from materials which otherwise are discarded or rejected by the Generator as Solid Waste, Recyclable Materials, and Organic Materials and which are sold or donated by the Generator to a private Recycler, scrap dealer, or salvager and Recycled. Scrap Materials shall not include any materials which (1) are commingled with Solid Waste, Recyclable Materials, or Organic Materials, or (2) are not commingled with Solid Waste, Recyclable Materials, or Organic Materials but which are collected by any person other than the Contractor as part of any transaction or arrangement involving Solid Waste, Recyclable Materials, and Organic Materials irrespective of whether the Generator pays or receives consideration in connection with such transaction or arrangement.

"Service Level" refers to the size of a Customer's Container and the frequency of Collection services which form the basis for provision of and charges for service.

"Single-Stream Recyclable Materials" means Recyclable Materials Contractor Collects from Residential and Commercial Customers including but not limited to: newspaper, cardboard, mixed color paper, white paper, junk mail, magazines, telephone books, paper bags, cereal and food boxes, egg cartons, plastic bottles and containers labeled #1-7, plastic milk containers, plastic bags, detergent containers, clear, brown, and green food and beverage container glass, cans of aluminum, steel, tin, food cans, empty aerosol cans, pie tins or other materials having economic value contained within a load of Recyclable Materials, and may also include any other type of Recyclable Material agreed on by the Parties. Single-Stream Recyclable Materials shall include, at a minimum, Recyclable Materials specified for collection in Contra Costa County Ordinance Section 418-10.604.

"Single-Unit Dwelling" means a dwelling designed for or occupied exclusively for human shelter by one (1) family.

"Solid Waste" means all garbage, refuse, rubbish, and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the Generator thereof at the time of such discard or rejection and which are normally discarded by or collected from Residential Premises, Commercial Premises, which are acceptable at Class III landfills under Applicable Law, and which are

EXHIBIT A DEFINITIONS

originally discarded by the first Generator thereof and have not been previously Processed. Solid Waste does not include Hazardous Waste, Medical Waste, Infectious Waste, Liquid Waste, Scrap Materials, Construction and Demolition Debris, or self-hauled waste. Solid Waste includes only those materials which were originally discarded by the first Generator thereof, prior to any Processing at any Collection Premises within the District.

"Special Circumstance" means a circumstance which, when occurring, permits, but does not require the Contractor or the District to seek an adjustment in the Rates for Service, and which then requires District General Manager to review such application and make a recommendation to the District Board as to whether the Rate should be adjusted up or down, or remain unchanged. The continuing need for any and all previously-approved Special Circumstance Rate adjustments shall be reviewed at the time of each subsequent Rate adjustment.

"Special Service" means a level of Collection service in excess of that offered by the Contractor as its basic level of service, at an additional cost to the Customer and may include, but is not limited to, additional Containers or more frequent Collections. "Special Service" does not mean the reasonable accommodation of an individual with a disability. The charge for any Special Service shall be reviewed by the District General Manager.

"SRRE" means the County's Source Reduction and Recycling Element approved by CalRecycle, as the element may be amended from time to time, all in accordance with AB 939 and regulations related thereto, as they may be amended from time to time.

"State" means the State of California.

"Subcontractor" means every person (other than employees of the Contractor) employed or engaged by the Contractor or any person directly or indirectly in privity with the Contractor (including every Subcontractor of whatever tier) for any portion of the Franchise Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Section 3.1.

"Tipping Fee" shall mean the amount of Tipping Fee charged for each Ton or unit of material delivered to an Approved Facility. The "current approved" Tipping Fees shall be the Tipping Fees in place on January 1 immediately preceding the submission of the Rate Application.

"Ton" or "Tonnage" means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

"Total Contractor's Compensation" shall mean the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Contractor's Compensation does not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by the Contractor.

EXHIBIT A DEFINITIONS

"Transfer" means the act of transferring the materials Collected by Contractor in their route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

"Transport" or "Transportation" (or any variation thereof) means the act of conveyance from one place to another or state of being Transported.

"Uncontrollable Circumstance" means only one (1) or more of the following specified acts, events, or conditions, whether affecting the Operating Assets, an Approved Facility, the District, or the Contractor, to the extent that it materially and adversely affects the ability of the Contractor to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control, and is not also the result of the willful or negligent act, error, or omission or failure to exercise reasonable diligence on the part of the Contractor, provided however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of the Contractor:

- A. An act of God (but not including reasonably anticipated weather conditions for the District), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance.
- B. A Change in Law (as defined herein).
- C. Preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Operating Assets.
- D. The first seven (7) days of a strike, work stoppage, or other labor dispute or disturbance occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Franchise Services, provided the Contractor has implemented a contingency plan satisfactory to the District General Manager.

It is specifically understood that only the acts or conditions specified above shall constitute Uncontrollable Circumstances. Without limiting the generality of the foregoing, the Parties acknowledge that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- 1. General economic conditions, interest or inflation rates, currency fluctuations or changes in the cost or availability of fuel, commodities, supplies, or equipment;
- 2. Changes in the financial condition of the District, the Contractor, or any of its Affiliates, or any Subcontractor affecting their ability to perform their obligations;
- 3. The consequences of errors, neglect, or omission by the Contractor, any of its Affiliates, or any Subcontractor of any tier in the performance of the Franchise Services;

EXHIBIT A DEFINITIONS

4. The failure of the Contractor to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;
5. Union work rules, requirements, or demands which have the effect of increasing the number of employees employed in connection with the Operating Assets, or otherwise increase the cost to the Contractor of operating and maintaining the Operating Assets or providing the Franchise Services;
6. Any strikes, work stoppages, or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Operating Assets or the Franchise Services and which last beyond seven (7) days;
7. Any failure of any Subcontractor to furnish labor, materials, service, or equipment for any reason;
8. Vehicle or equipment failure;
9. Any impact of prevailing wage law, customs, or practices on the Contractor's construction or operating costs; or,
10. Any act, event, or circumstance occurring outside of the United States.

"**Universal Waste (U-Waste)**" means all wastes as defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, mercury switches, and E-Waste.

"**Vehicle**" means any truck, rolling stock, or other Vehicle used by the Contractor in connection with Franchise Services.

EXHIBIT B RATE ADJUSTMENT METHODOLOGY

General

Subject to the terms herein, the Contractor shall be entitled to an annual adjustment of all Rates. Contractor shall submit its calculation of a Rate adjustment to the District General Manager on or before October 1 of each year. Contractor's Rate calculations shall include a proposed new Rate schedule, all supporting calculations, and any other documentation or evidence determined by the District General Manager to be reasonably necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance to the requirements of this Exhibit B.

The District General Manager shall make a good faith effort to approve Rates by November 1 of each year, and such Rates shall be effective on each subsequent January 1. If Rates are not effective by January 1 due to a delay caused solely by the District, District shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of said delay that is solely caused by the District. If Rates are not effective by January 1 as a result of Contractor's delay in submitting the Rate calculations in a complete and accurate form, then prior Rates remain in effect until such adjustment is made.

Index Rate Adjustment

The index Rate adjustment methodology involves adjusting then-current Rates by the CPI to determine the Rates for the coming calendar year. The intent of performing the index-based adjustment is to allow Contractor's Compensation to be adjusted annually throughout the Term of this Agreement using a simple mathematical formula based on a readily available price index, rather than conducting the rate adjustments through review of actual changes in Contractor's costs for providing service.

If the CPI is discontinued or revised during the Term by the BLS, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if said index had not been discontinued or revised.

Calculation Method

Contractor shall calculate the adjustment to its Rates using the following methodology:

Step 1: Determine the Annual Percentage Change in the CPI. The Annual Percentage Change means the percentage change in the CPI for August over the prior year as reported by the U.S. Bureau of Labor Statistics. As of the Effective Date, the percentage change in CPI shall be obtained from U.S. Bureau of Labor Statistics "Table 16. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, by expenditure category and commodity and service-group" for San Francisco-Oakland-San Jose, CA. An example of this table is provided herein. The Annual Percentage Change shall be rounded to the nearest tenth percent (0.1%).

EXHIBIT B RATE ADJUSTMENT METHODOLOGY

Table B-1. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, by expenditure category and commodity and service group-Continued

(1982=100, unless otherwise noted)

Commodity and service group	Monthly rates and rates scheduled in 2 ¹					
	San Francisco-Oakland-San Jose, CA			Seattle-Tacoma-Bremerton, WA		
	Index	Percent change from--		Index	Percent change from--	
		Aug 2014	Aug 2013		June 2014	Aug 2013
Expenditure category						
All items	253.354	3.0	0.0	247.165	1.8	-0.2
All items (1982=100) ²	778.530	-	-	753.515	-	-
Food and beverages						
Food	254.588	3.9	1.0	254.356	2.7	4
Food at home	248.412	5.4	5	243.270	3.5	4
Food away from home	262.111	2.2	6	271.987	1.7	3
Alcoholic beverages	262.361	5.7	4.0	219.352	2.5	1.2
Housing						
Housing	279.765	4.2	1.0	262.051	3.7	3
Shelter	315.195	4.8	1.2	293.361	4.4	5
Rent of primary residence ³	352.421	5.8	1.2	294.068	6.0	9
Owners' equivalent rent of residences ^{3,4}	333.578	4.7	8	305.895	4.6	6
Owners' equivalent rent of primary residence ^{3,4}	339.578	4.7	8	305.595	4.5	6
Fuels and utilities	331.835	2.7	-2	245.025	1.3	1
Household energy	302.311	3	-3.4	234.212	-1	-1
Electricity ⁵	302.077	3	-3.3	264.527	3	0
Electricity ⁵	315.530	3.3	-4.9	278.135	3	0
Utility (fuel) gas service ³	281.625	11.6	1.0	161.528	1	0
Household furniture and operations	132.845	3	3	170.241	3	4
Apparel						
Apparel	116.291	8	1.8	132.477	8	5
Transportation						
Transportation	195.620	-4	-3.6	232.204	3	2.7
Private transportation	167.215	1	3.1	244.222	4	-6
Motor fuel	267.488	2.0	-4.6	415.431	1.3	2.4
Gasoline (all types)	296.273	2.0	-4.9	423.981	1.2	2.4
Gasoline, unleaded regular ³	297.943	2.0	-4.9	468.790	1.2	2.4
Gasoline, unleaded midgrade ^{3,6}	273.395	2.0	-4.7	325.075	1.0	2.4
Gasoline, unleaded premium ³	274.718	1.3	4.7	370.694	1.1	2.2
Motor vehicles	NA	-	-	NA	-	-
Medical care						
Medical care	NA	-	-	NA	-	-
Recreation						
Recreation	169.645	-5	-7	95.350	-1.0	5
Education and communication						
Education and communication	141.870	1.1	-2	138.462	1.5	4
Other goods and services						
Other goods and services	427.137	2.5	-1	296.334	1.6	1.8
Commodity and service group						
All items	253.354	3.0	0	247.165	1.8	-2
Commodities	184.735	1.3	-6	162.227	4	3
Commodities less food and beverages	145.071	-7	-1.5	167.938	-1.1	-7
Non-durable less food and beverages	169.695	5	-1.5	203.163	-3	-1.1
Durable	102.610	-2.5	1.5	129.046	-2.1	-1
Services	310.960	3.8	3	285.122	2.8	1
Special aggregate indexes						
All items less medical care	245.285	2.7	0	241.196	2.0	-1
All items less shelter	228.288	1.8	-7	230.237	5	5
Commodities less food	150.288	4	-1.4	170.191	-9	6
Non-durable	224.030	2.5	-2	228.273	1.1	3
Non-durable less food	193.403	1.0	-1.1	207.565	0	-9
Services less rent of shelter ⁴	321.538	2.5	-6	304.623	5	-9
Services less medical care services	301.878	3.5	4	285.180	3.1	-2
Energy	302.711	1.3	-4.3	327.589	1.0	-1.5
All items less energy	253.827	3.1	3	244.848	1.9	-1
All items less food and energy	254.448	2.9	2	243.471	1.7	-1

¹ Areas on pricing schedule 1 (see Table B-1) will appear next month.

² Index on a November 1982=100 basis to illustrate.

³ We believe better price estimates using a Laspeyres estimator. (1) other Laspeyres index used as a reference indicator using a geometric mean estimator.

⁴ Index on a December 1982=100 basis.

⁵ Special index based on a substantially smaller sample.

⁶ Index on a December 1982=100 basis.

⁷ Index on a December 1982=100 basis.

⁸ Data not available for this category.

⁹ Data not available.

NOTE: Items apply to a month as a whole, not to any specific date.

EXHIBIT B RATE ADJUSTMENT METHODOLOGY

Step 2: Specify the Rate Adjustment Factor, which shall equal:

1. The Annual Percentage Change in CPI (determined in Step 1) if the Annual Percentage Change is equal to or greater than 3.0% and equal to or less than 5.0%; or
2. 3.0% if the Annual Percentage Change in CPI is less than 3.0%; or,
3. 5.0% if the Annual Percentage Change in CPI is greater than 5.0%.

Step 3: Calculate the adjusted value for each Rate charged under this Agreement, rounded to the nearest cent, as follows:

Adjusted Rate = Then-current Rate x (1 + Rate Adjustment Factor) with the exception that the 20-gallon Rate shall equal the adjusted monthly 32-gallon Rate less \$4.00

For example, assuming:

1. Then-current Rate for a 32-gallon can = \$40.00
2. Rate Adjustment Factor = Annual Percentage Change in CPI = 3.54%
3. Adjusted Rate for a 32-gallon can = $\$40.00 \times (1 + 0.0354) = \41.42

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EXHIBIT C APPROVED SUBCONTRACTORS

As of the Commencement Date of this Agreement, approved Subcontractors shall include the following companies for provision of services specified herein:

- (i) Republic Services, Inc. (or its affiliated entities) for provision of Transfer, Processing and Disposal services at the following Approved Facilities:
 - a. Transfer services at the Golden Bear Waste Recycling Center located at the foot of Parr Boulevard, Richmond, CA (an Approved Transfer Facility);
 - b. Processing of Organic Materials at the composting facility at the West Contra Costa Sanitary Landfill (WCCSL) Organics Processing Facility located at the foot of Parr Boulevard, Richmond, CA (an Approved Organics Materials Processing Facility);
 - c. Processing of Recyclables Materials at the West County Resource Recovery Facility located at 101 Pittsburg Avenue, Richmond, CA or the Newby Island Recycling Facility (also known as BFI's Recyclery) located at 1601 Dixon Landing Road, San Jose, CA (Approved Recyclable Materials Processing Facilities); and,
 - d. Disposal of Solid Waste at Keller Canyon Landfill located at 901 Bailey Road, Pittsburg, CA (an Approved Disposal Facility).

- (ii) Waste Connections, Inc. (or its affiliated entities) for provision of Disposal services at Potrero Hills Landfill located at 3675 Potrero Hills Road, Suisun City, CA (an Approved Disposal Facility).

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EXHIBIT D REPORTING REQUIREMENTS

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations.
2. Evaluate past and expected progress towards achieving the Contractor's Diversion goals and objectives.
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under AB 939 and AB 341.
4. Determine needs for adjustment to programs.
5. Evaluate Customer service and complaints.

CERCLA Reporting

District views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, District regards its ability to prove where Collected Solid Waste is taken for Transfer or Disposal. Contractor shall maintain records which can establish where Solid Waste Collected was Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to the District (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

Quarterly Report Content

Quarterly reports shall be presented by Contractor to show the following information for each month in the reported quarter and include a quarterly average. In addition, each quarterly report shall show the past four (4) quarters average for data comparison (the first three (3) quarters of the Agreement shall only include the available quarterly information). Contractor shall submit quarterly reports on the fifteen day (15th) following the end of the calendar quarter (e.g., April 15 for the prior quarter).

1. Tonnage Report

- A. Tonnage delivered to each Approved Facility by Customer Type, subtotaling and clearly identifying those Tons that are Disposed and those that are Diverted.
- B. Recyclable Materials Tonnage Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.
- C. Organic Materials Tonnage Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage Disposed.

EXHIBIT D REPORTING REQUIREMENTS

2. Customer Report

- A. Number of Customers by Customer Type.
- B. Number of Containers at each Service Level by Customer Type and program. Summarizing the total gallons of Container service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop Box and Compactor service by Customer Type. Report should calculate the average volume of service received per Single-Family Customer and Commercial Customer.
- C. Participation level (i.e., the number of Residential Customers participating in the Recycling and Organic Materials program) based on one sample week during each calendar quarter.

3. Customer Service Report

- A. Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for Recycling information, Rate information, etc.). For complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.).
- B. Number of new service requests for each Customer Type and program.
- C. Number of events of Discarded Materials being tagged for non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable materials, improper setout, Hazardous Waste, etc.).

4. Education and Outreach Report. Identify what, if any, public education and outreach Contractor performed.

5. Revenue Report

- A. Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 8.2.
- B. Maintain a list of Customers that are forty five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; method(s) the Contractor has used to attempt collection of the bad debt including date of such attempt(s); and, identification, if, and when the Contractor plans to or did stop service to a delinquent account.

Annual Report Content

The annual report shall be the fourth quarterly report plus the following additional information.

1. Summary Assessment

Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in

EXHIBIT D REPORTING REQUIREMENTS

meeting all the goals and objectives of this Agreement, particularly the Contractor's diversion goals. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

2. Vehicle Inventory

Provide a listing of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.

3. Recyclables and Organics Markets

Contractor shall include a listing of markets for Recovered Materials and the end use of these materials. This type of information is intended to help the District gauge the sustainability of Recycling markets and the ultimate Disposal of all types of materials Collected.

4. Operational Statistics and Information

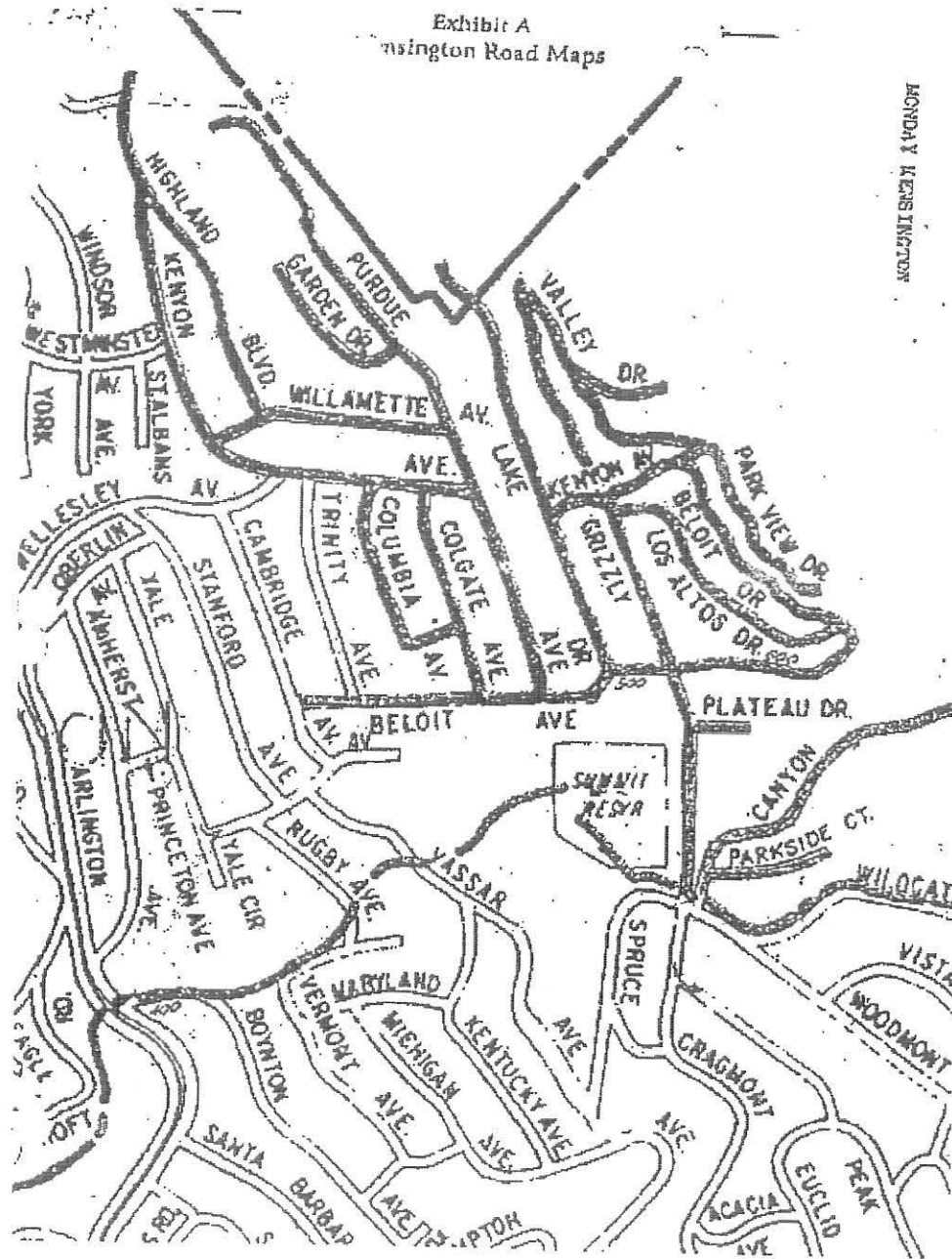
- A. Number of routes per day by Customer Type and number of operating hours per route
- B. Crew size per route
- B. Personnel:
 - i. Organizational chart.
 - ii. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).
 - iii. Number of hours per job classification per year

5. **Financial Statement.** An annual CPA-reviewed financial statement prepared by an independent certified public accountant (CPA), who is not an employee of the Contractor or of an Affiliate, in accordance with GAAP for the most-recently completed calendar period. Such report shall be provided by March 30 of each year commencing March 30, 2016.

6. **Audit of Gross Receipts and Franchise Fees.** An annual CPA-audited financial statement of Gross Receipts and Franchise Fees paid to the District prepared by an independent CPA, who is not an employee of the Contractor or of an Affiliate, for the most-recently completed calendar period. The purpose of such report shall be to establish that services are being billed and Franchise Fees are being paid in accordance with the Agreement. Such report shall be provided by March 30 of each year commencing March 30, 2016.

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EXHIBIT E MAP OF DISTRICT FRANCHISE AREA



**EXHIBIT E (CONT.)
MAP OF DISTRICT FRANCHISE AREA**

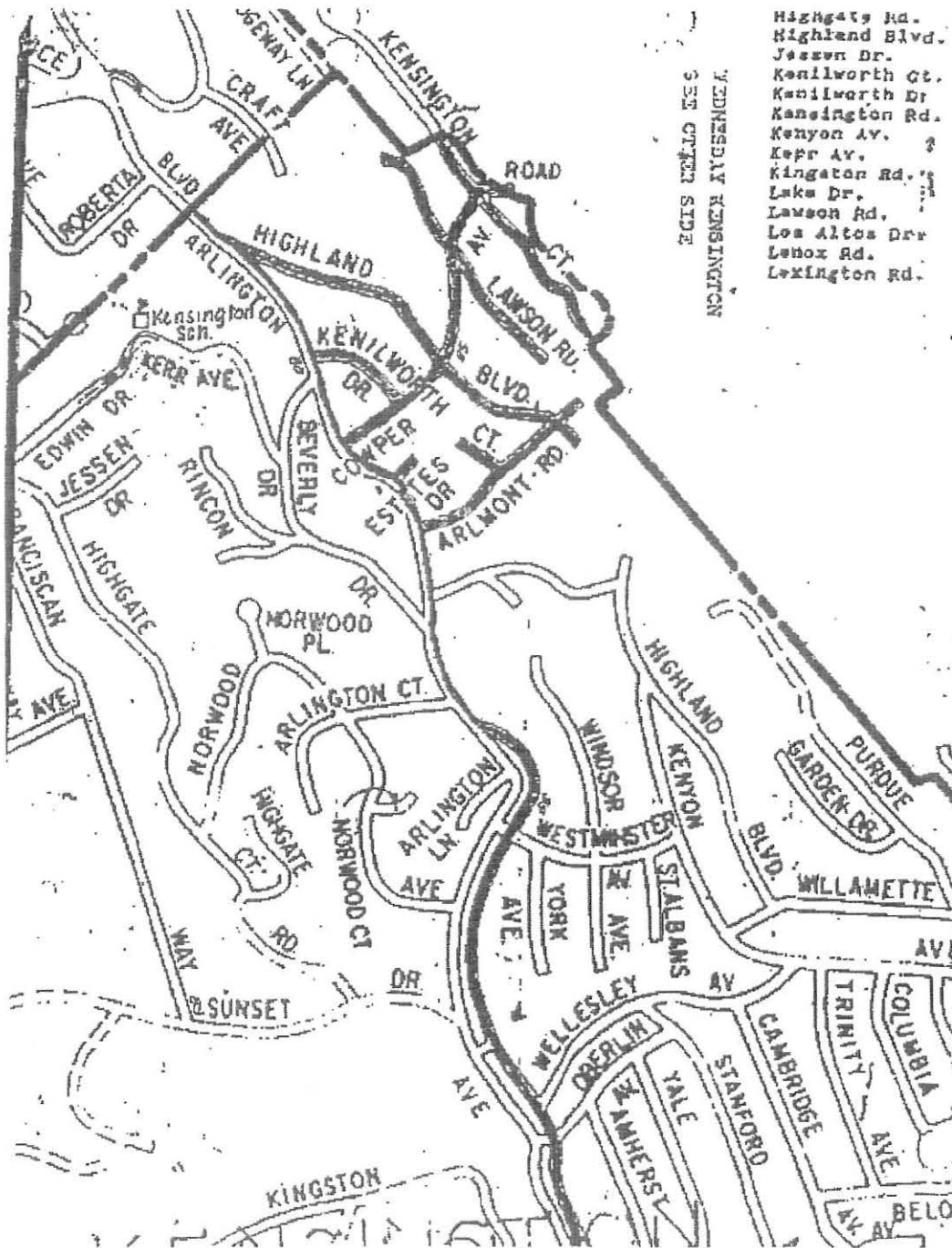


EXHIBIT E (CONT.)
MAP OF DISTRICT FRANCHISE AREA

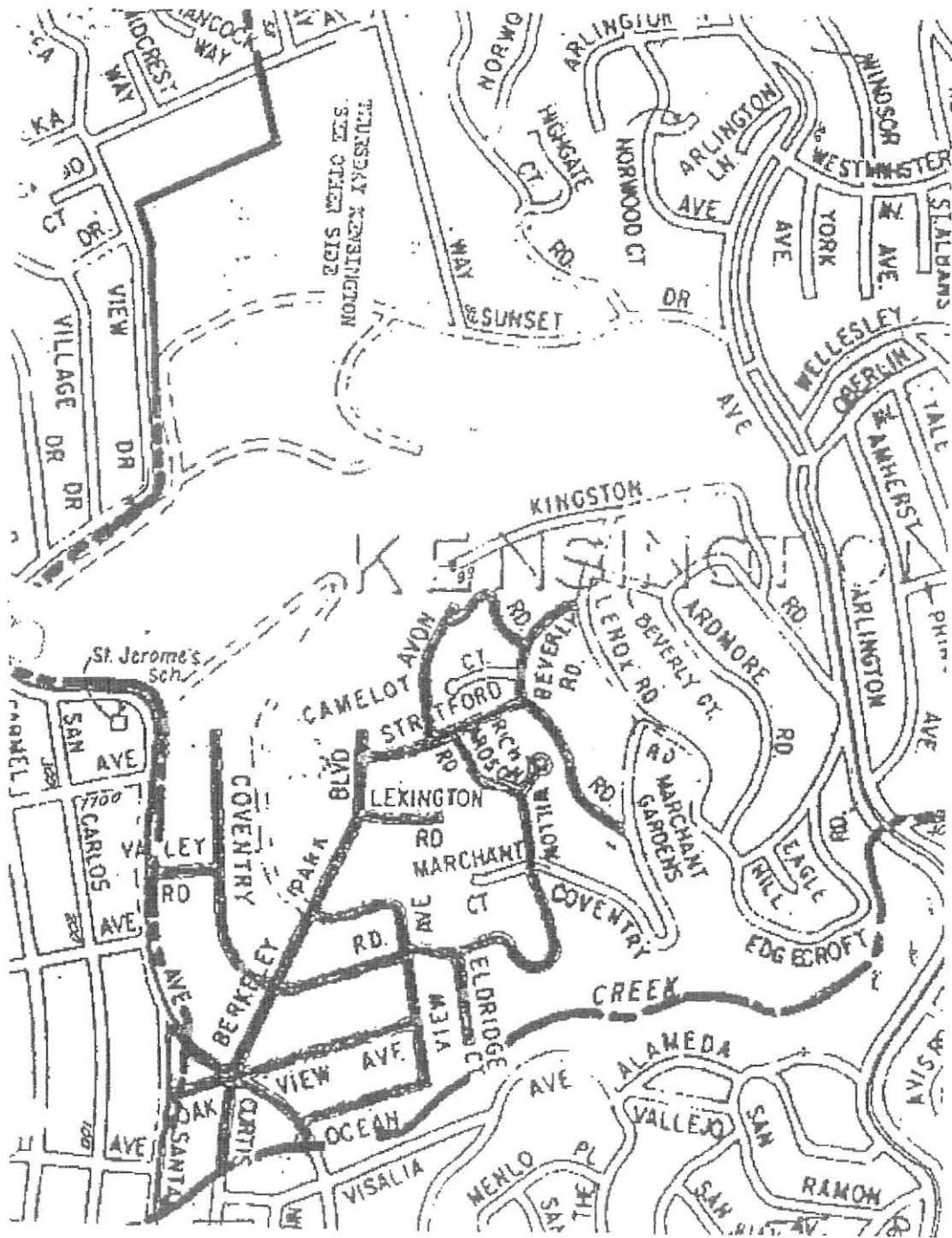
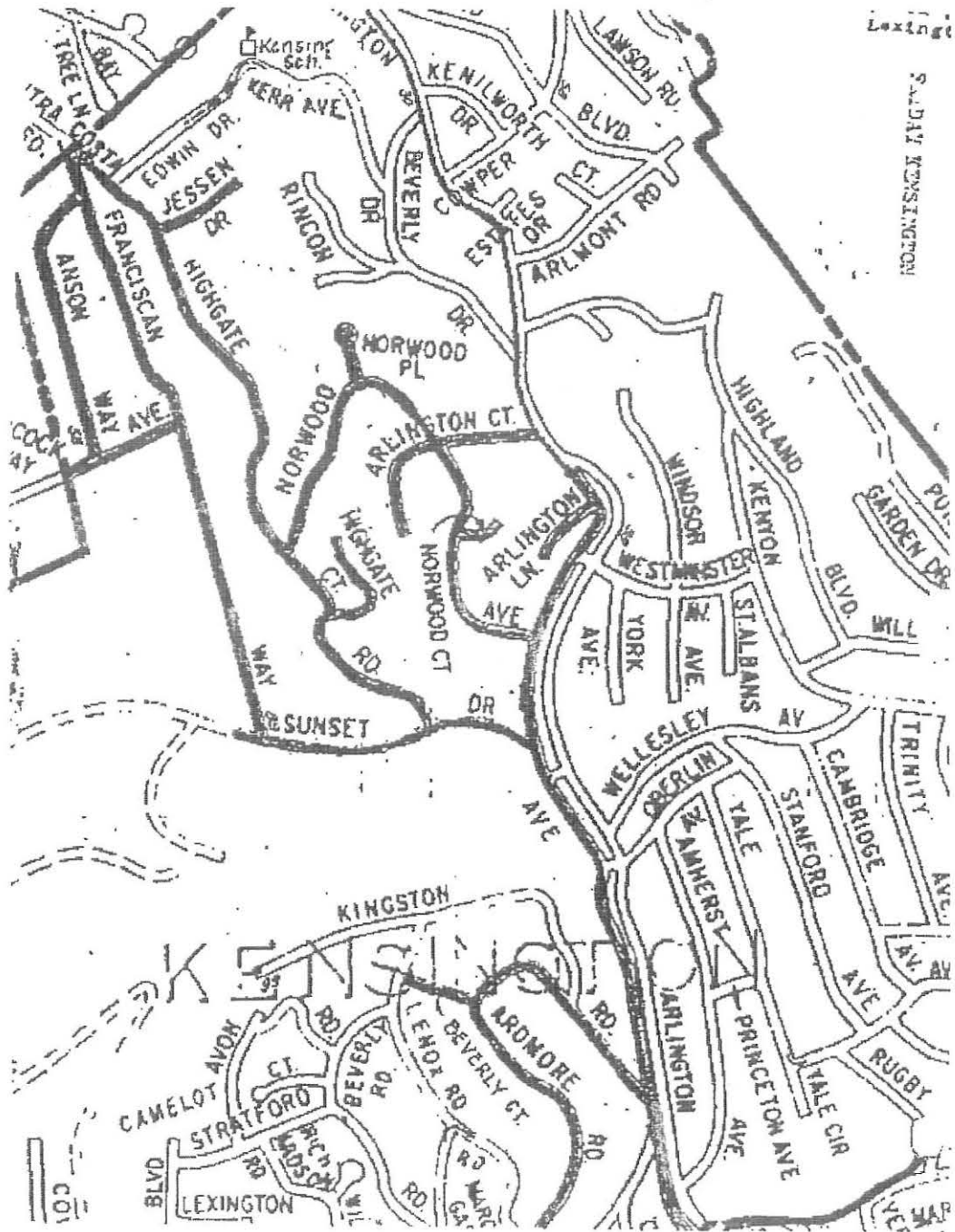


EXHIBIT E (CONT.)
MAP OF DISTRICT FRANCHISE AREA



UNINCORPORATED COUNTY DIVERSION DATA REPORTING FORM

Service Provider: _____
 Program Type: _____
 Unincorporated Service Area: _____
 Is the data taken from an annual report (Yes or No)? _____
 If not, which quarter of the year (e.g. 1,2,3 or 4)? _____
 Year: _____

MATERIAL TYPES
ENTER TONNAGES (unless otherwise specified) BY MATERIAL TYPE
Abbreviations are shown in parenthesis

PAPER

Corrugated Cardboard (OCC): _____
 Newsprint (ONP): _____
 High grade (HG): _____
 Mixed Paper (MP): _____
 Magazines (OMG): _____

PLASTIC

Polythylene Terephthalate #1 (PET) _____
 High Density Polyethylene #2 (HDPE) _____
 Polyvinyl Chloride #3 (PVC) _____
 Low Density Polyethylene #4 (LDPE) _____
 Polypropylene #5 (PP): _____
 Polystyrene #6 (PS): _____
 Other (P-X): _____

GLASS

CA Redemption Value Cont. (CRV) _____
 Non CRV Bottles and Jars (No CRV) _____
 Other Glass (GLS): _____

METAL

Aluminum Cans (UBC): _____
 Tinned cans and ferrous (Fe): _____
 Other non-ferrous (N-Fe): _____
 Generic Metal (Mixed): _____

ORGANICS

Yard Waste (YW): _____
 Food Waste (FW): _____
 Wood Waste (WW): _____
 Mixed Organic Waste (MOW): _____

HHW / E-WASTE

Used Oil – gallons: _____
 Oil Filters – each: _____
 Antifreeze – gallons: _____
 Auto Batteries – each: _____
 Latex Paint – cans: _____
 TVs and Monitors (CRTs) – each: _____
 E-Waste – each: _____

INERTS, CONSTRUCTION / DEMOLITION, DIRT

Mixed C and D (C and D): _____
 Inerts (INRT): _____
 Asphalt (Asph) _____
 Concrete (Conc): _____
 Dirt/Soil (Dirt): _____

OTHER MATERIALS

Beverage Containers (Bev Cont): _____
 Textiles (TX): _____
 TS/LF Salvage (Salvage): _____
 White Goods (WG): _____
 Reusables (REUSE): _____
 Tires – each: _____
 Commingled: _____
 Other (OTHER): _____
 Residuals (Non-Diversion): _____

Completed by: _____
 Phone No. _____
 E-Mail _____

Date: _____

Page ___ of ___

Instructions for completing diversion data forms:

The attached form has been designed to assist Contra Costa County in compiling information on diversion programs in unincorporated areas of the County. The use of these forms will aid County staff in tracking the progress of individual waste diversion programs and unincorporated communities. The following instructions have been written to assist you in accurate and efficient completion of these forms:

- Service Provider: Enter the name of your company or franchised service provider.
- Program Type: Enter the program name (for example: curbside drop-off, drop-off, greenwaste collection). **Complete a separate form for each program!**
- Unincorporated Service Area: If possible, indicate the Unincorporated Service Area where the materials came from (e.g. Crockett). If specific information is unavailable, use a more general description to identify the location or region (e.g. use West County to identify materials collected in the western region of Contra Costa County). **Complete a separate form for each Unincorporated Area!**
- On the next two lines, please indicate whether the data represents an entire year or is a single quarter. If data is for a single quarter, be sure to use a new form for each quarter of data.
- Enter the tonnages of each material type you handle. If you have a material type that does not appear on the list, use one of the categories listed as listed as "other" to report materials. For paper grades not listed, use either "mixed paper" or "high grade paper", as appropriate.
- Use the space provided under "notes" to make any special comments about the data presented in the form.
- At the bottom of the page write your name, the name of your organization and phone number, the date; and the current page and total number of pages being submitted.

If you have any questions or concerns regarding the completion of these forms, please call Marjorie Koll or Deidra Dingman at (925) 674-7203.

Thank You For Your Assistance!